THE CAUSES OF INDUSTRIAL UNREST

BY

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THE CAUSES OF INDUSTRIAL UNREST

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EDITOR'S INTRODUCTION

This book is an interpretation, rather than a report of an exhaustive investigation—an interpretation to the America that lives in the idealism of the past of what the author himself has found in the industrial unrest of the present. No constructive adjustment for the future can possibly be made except as it is based on just such patient investigation and calm interpretation as Mr. Fitch has pursued and contributed in this book.

JOHN R. COMMONS.

July, 1924.

FOREWORD

THIS is a book with a definite and limited purpose. It is an attempt to reveal the background, the point of view, and the circumstances out of which the labor struggle emerges. It is written in the hope that it may contribute a little toward an understanding of the phenomena of unrest—the state of mind that finds expression now in labor turnover, now in mutterings of discontent, now in strikes, and now in violence.

The primary purpose in these pages is to show that, whether the activities of working people in the defense or in the extension of what they believe to be their rights are wise or unwise, they are not irrational. It is possible for a reasonable man, whether he approves of them or not, to understand them if he will try to put himself in the position of the actors. I do not mean to say that every offensive or defensive act committed by a wage-earner in his relations with his employer is one that will commend itself to a thoughtful observer as reasonable, or even that such an observer will always be able to discover reasons for any particular act that he can understand. But neither would I claim that for any other group in human society. No one is so rational that everyone understands his every act.

It follows that even a friendly observer will find some of the acts of men and women in the labor movement unreasonable or inexplicable. But in the main, just as in the case of other groups, their acts are capable of being understood when one is in possession of the facts. That is

because, being members of the human race, they possess the equipment, mental and moral, that belongs to the race as a whole, and therefore react to any given stimulus in a characteristically human way. Working people worry about the same sort of things that other people worry about. The aspirations of a hod carrier and a banker are not essentially dissimilar. Each dislikes to be thwarted in his purposes; each resents a denial of his rights or an affront to his dignity; each, in addition to his economic ambitions, desires an outlet for his spiritual and emotional nature. When we understand that we are ready to understand the "labor problem."

In this book, therefore, an attempt is made to bring together such facts as will show the background and the setting of industrial unrest. The material presented has been selected entirely from this point of view. Consequently, Part II, dealing with the struggle, and Part III, dealing largely with the courts, are not as inclusive as they would be if the subjects discussed were different. In Part II we are considering the struggle between the two groups commonly spoken of as "capital" and "labor," for the purpose of showing that the struggle itself is a cause of unrest. Here we are dealing with the field that is often spoken of as that of "industrial relations." But Part II is not a discussion of industrial relations. If it were intended to cover that field, many subjects not now taken into account would have to be included. It would be desirable, in such a case, to consider all of the outstanding contributions both of employers and of employees to better industrial relations as well as the factors that make for bad relationships. But since industrial unrest is our theme, we consider in Part II, not agreement, but struggle. The chapters in this section, therefore, do not

present a cross section of industrial theories and practices. In the main they present the militant aspect of industrial relations, and they are intended to do so because it is here that the action is taken and the blows are struck that tend to increase rather than to allay dissatisfaction and unrest.

But it must not be supposed that we are dealing with only a limited and unrepresentative aspect of industrial relations when we choose for discussion practices of employers that are not characteristic of the whole group. The point of view represented—that of opposition to organized labor—is characteristic of the majority of American employers. That attitude has a profound influence on the thinking and point of view of the workers who favor organization. It contributes very materially to the development among them of an attitude of protest and a sense of injustice. Given this attitude of opposition on the part of the employer, and a consequent sense of injustice on the part of the employees, it does not make much difference, so far as the psychological effects are concerned, that the harshest forms of opposition are not characteristic of employers as a body. The effect of these harsher methods is felt not alone by the particular employees who experience them, but by the working class as a whole. Arbitrary or unfair methods in dealing with labor, whenever they emerge, are bound to have an influence beyond the limits of the establishments actually involved. Wherever they become known they tend to create an attitude of disaffection toward employers as a class. It is necessary, therefore, to give attention to them in any consideration of industrial unrest.

In the same way our discussion of the courts falls short of being a presentation of the whole subject of the rela-

tion of the judiciary to the problems of labor. In the chapters dealing with the law as laid down in court decisions, it is my intention to make as complete and as accurate a statement as the limitations of space and the equipment of a layman will permit. If the discussion at this point seems inadequate, it must be attributed to these handicaps, and not to design. But in Chapter XVII, entitled "Labor and the Courts," no attempt is made to present all points of view. That there exists a strong and growing body of judicial opinion that is favorable to the aspirations of labor is clear to anyone who has given any attention to the dissenting opinions. It seems to me that the prevailing judicial opinion at present is rather unfavorable to these aspirations, but that is not my reason for disregarding the favorable views in Chapter XVII, nor was it a guide in selecting the cases that are presented in that chapter. I have consciously presented there decisions that do not represent the prevailing attitude of the courts. The Zancanelli case, in particular, is an outstanding example of the exact contrary of customary court procedure.

But just as I have presented some examples of aggression on the part of employers, that leaves out of account the ethically minded employer, so in Chapter XVII, I bring together some cases that are not characteristic of the judiciary as a whole. And I do so for the same reason. These cases where hostility to organized labor is unquestionable have a very important influence on the attitude of the workers in general toward the courts. The fact that it is not fair to judge the courts in the light of these extraordinary cases is not a matter for present concern. We are not so judging them. The facts that are important, in the light of the theme of this book, are that

unjust and unjustifiable decisions are sometimes made by courts and that these decisions probably exert a greater influence in determining the attitude of the labor movement toward the courts than do the other decisions, however reasonable and just.

The subject matter of this book lies in a field in which controversy and prejudice frequently reign supreme. For that reason it seems desirable for the writer to make a brief statement of his own point of view. I do not regard unrest or struggle as undesirable in themselves. On the contrary, their existence is evidence of the state of health that is the mark of a dynamic society. It is not unrest that need concern us, but rather that the channels for expression of unrest shall be open and unobstructed.

I do not believe that there is anything sinister in the desire either of wage-earners or of employers to promote their own economic interests. In order that each may be in a position to do so effectively they should organize. Any attempt to prevent organization of either is therefore unreasonable and unjust. Evils, where they exist, should be opposed directly. The remedy for the evils of trade-unionism does not lie in the destruction of unions any more than political evils are to be cured by the destruction of government.

I do not believe that individuals are to blame for most of the evils suggested in this book, and I have no intention of apportioning blame. If one insists upon looking for a scapegoat, he will probably find it in society itself. I believe, as I have indicated earlier, that human motives do not differ greatly on account of social or economic standing, and that in all walks of life the great majority of men and women desire earnestly to be honest and unselfish. Consequently, I believe the basis of most of our

social difficulties is not ill will, but ignorance. It is my hope that this book may throw a little light on what is probably the greatest social problem of our time.

I wish to acknowledge here the assistance that I have received from many people in gathering and presenting this material, and who are too numerous to make individual mention possible. Mainly, I am indebted to those employers, working men and women, trade-union officials and organizers and citizens of industrial communities, who have in the last dozen years so generously given me their time and the benefit of their experience. I owe a great deal to colleagues past and present in the writing and teaching fields, to students of the New York School of Social Work, with whom in successive classes I have been threshing out these problems for the last seven years, and to many other friends in these and other categories, some of whom have read and criticized this book in manuscript.

THE CAUSES OF INDUSTRIAL UNREST

CHAPTER I

INTRODUCTORY

THE term "industrial unrest" is used here in the sense in which it is generally understood, referring to dissatisfaction and manifestations of dissatisfaction on the part of the workers, rather than on the part of the employer. This is because the struggle between the two parties that grows out of the feeling of unrest is generally, though not always, precipitated by the workers. Strikes are overwhelmingly more frequent than lockouts. Labor seems to be the aggressor in the struggle. It is battering at the employer's defenses, seeking a change in the *status quo*. The employer is generally on the defensive, since he either desires no change in conditions or he favors a revision downward. When the employer reduces wages or increases hours, he is really the aggressor, but he does not appear to be, because he does not attract attention unless the workers protest. If the protest takes the form of a strike, the laborers appear to be the aggressors almost as much as if they were striking for an improvement in their conditions, instead of against a reduction. However, the majority of the strikes are for an improvement in conditions. Generally the workers are the aggressors in fact as well as in appearance. It is not inappropriate, therefore, to

use the term industrial unrest to describe the state of mind of the workers rather than that of the employers.

It needs no argument to show that there is unrest in industry. There is evidence of it in any newspaper you may happen to pick up. Stray snatches of conversation borne to the ears in hotel lobbies and in public conveyances bear witness to its importance. In the quarter century 1881-1906 there were 36,757[1] strikes and lockouts in the United States, an average of 1,470 a year. In the two years 1917 and 1918 the number of strikes was 7,572, and in the period 1916 to 1921, inclusive, there were 20,062 strikes, an average of 3,343 strikes each year.[2]

Another evidence of unrest lies in the shifting from job to job that has come to be characteristic of modern industry. Labor turnover is the term used to describe this movement. It is measured by the ratio existing between men hired in a year and jobs available.[3] If as many men are hired in a year as there are jobs, the turnover is 100 per cent. It is significant that in most manufacturing enterprises that is not considered an alarmingly large figure.

Unrest has its origin in all sorts of factors and conditions, near and remote. In its manifestations it concerns itself with specific questions, generally economic in their nature. Among these are the following:

1. The Work Period:

Protest is made against a working day that is con-

[1] Twenty-first Annual Report, United States Commissioner of Labor.

[2] *Monthly Labor Review*, May, 1922, p. 181.

[3] This is not intended as an exact definition. Turnover is commonly reckoned on the basis of "separations." But for the layman unfamiliar with the refinements of the situation, it is easier to visualize turnover in terms of men hired.

sidered unduly long. As the benefits of leisure become more apparent, the emphasis changes from protest against a long day to a demand for a progressively shorter one.

2. Inadequacy and Uncertainty of Income:

To a peculiar degree the wage earner is a victim of economic insecurity and the labor struggle is to a very large extent a groping about for certainty of income. Of all strikes and lockouts occurring in the period 1881-1906 52 per cent involved demands for higher wages or protests against a reduction. The wage-earner is always uncertain about his income, even when regularly employed, on account of the fluctuations in labor supply and in managerial efficiency. He is uncertain about its value on account of variations in commodity prices, and he is handicapped in bargaining about it because he has very little information as to what his labor is really worth.

3. Industrial Hazards:

Anything that makes it impossible to work, whether inability to find a job or inability to perform labor on account of accident, illness, or old age, adds tremendously to the wage-earners' economic problems. These matters are also factors in his feeling of insecurity, for, excepting old age, he may at any time become the victim of any of these hazards.

4. Struggle and Repression:

The unrest developed by these economic handicaps leads naturally to struggle. This struggle represents a conflict in objectives. The wage-earners, instead of finding an easy road to the goal of their

desires, find themselves opposed, thwarted, repressed. In proportion as this repression is accompanied by obvious ill will or ruthlessness, to that extent it results in an inflammation of the dissatisfaction previously existing, which explains in part the emergence of violence in labor disputes.

5. Attitude of the Government:

Another factor tending further to develop unrest and class consciousness is the fact that in their struggle for economic advance the workers feel that they cannot count on the assistance of any outside agency. Engaged in a movement which the workers believe to be in line with the higher purposes of society as a whole—that is, the progressive advancement in well-being and ideals of a large proportion of the race—they often find organized society—the state—indifferent or hostile. Legislation for their protection is meager; the legal status of their organizations is uncertain; the courts frequently interfere to hamper and restrict.

These are the specific matters with which labor conflict is generally concerned. There is a widespread tendency, and it is to be found even among certain labor leaders, to assume that in this enumeration a complete listing of the causes of industrial unrest is to be found. One would gather from some spokesmen that the labor movement is concerned with nothing but wages and hours. There is something to be said for this point of view. Unrest certainly does represent a definite protest against definite circumstances. Strikes are not ordinarily for abstract principles, but for specific things; consequently,

in a discussion of industrial unrest it is necessary, for the most part, to give attention to those things. The more thought one gives to them, however, the clearer it becomes that struggles for these seemingly tangible things are often but evidences of dissatisfactions more fundamental, of an unrest that is deeper seated than anything apparent on the surface. The labor movement is in part a crying-out for the flesh pots, but it is also something of far greater significance than that.

It was pointed out above that in the last few years there have been in the United States an average of nine to ten strikes a day, and that a majority have been fought, directly or indirectly, over wages. This is impressive, but at the same time there has been another demonstration less spectacular in form, but possibly of greater real significance. A student of employment relations has recently estimated that in normal times 2 per cent of the working force of any factory is unnecessarily absent every day.[1] Indifference when at work is a marked characteristic of wage earners everywhere. Individual soldiering and concerted restriction of output are widespread.

Labor turnover is a phenomenon the importance of which has been recognized only within the last few years. With the keeping of employment records we are now beginning to recognize its significance. Magnus W. Alexander, one of the first to make an intelligent study of turnover records, reported that 42,500 men were hired in 1913 by a group of factories in order to keep up an average force of 40,600 workers. Boyd Fisher, then secretary of the Executives' Club of Detroit, found in 1915 in fifty-seven Detroit factories an average turnover

[1] J. D. Hackett, "Absentism: A Quantitative Study," *Management Engineering*, February, 1922.

of 258 per cent. In 1918 Boris Emmet made a study of twenty-two factories for the United States Bureau of Labor Statistics. Their turnover records were as follows: Four ranged from 50 per cent to 100 per cent turnover; three from 100 per cent to 150 per cent; two from 150 per cent to 200 per cent; five from 200 per cent to 250 per cent; three from 250 per cent to 300 per cent; five from 300 per cent to 400 per cent.[1] Other studies have discovered similar conditions.

These figures indicate clearly enough that for some reason factory work is not sufficiently attractive to command the loyalty and devotion of those who are engaged in it. Instead of looking upon his work with enthusiasm, it appears that the average wage-earner approaches it with reluctance, if not distaste, stays away from it when he can, lacks interest in the thing to be accomplished, and quits without hesitancy or regret whenever the time seems opportune for taking a chance on another job. Instead of a body of workers growing up in a plant, giving it their best strength and glorying in its successes, there seems to be a constant procession of workers passing through the factories of the land—individuals pausing here and there for a few weeks or months, and again joining the procession—constantly searching for something that, apparently, is never found.

A great deal of this movement is due to bad conditions in the shop. Where wages are high, hours reasonable, and shop conditions agreeable, turnover is apt to be lower. Furthermore, a firm may lower its turnover by improving its methods of employment. Nevertheless, to a considerable degree, the tendency to shift about, to come late,

[1] *Monthly Labor Review,* October, 1918.

and to go slow exists independently of working conditions. It is not to be accounted for altogether on the ground of long hours, low wages, or bad shop conditions, nor, since few men are naturally lazy, is laziness the explanation. To what then can we attribute the prevailing lack of interest in work? The tendency is not confined to any one industry or to any one country or race. It seems to be universal. The reasons for its existence are neither temporary nor local. In searching for causes, therefore, we shall have to take into account certain human characteristics, and endeavor to find out whether industry is conducted in such a manner as to harmonize with them.

In the following chapters the discussion will follow the general plan outlined above. Part I will deal with the economic background of unrest, Part II with the struggle arising out of the economic factors involved, Part III with the relation of the government to unrest, and Part IV with the more deeply fundamental causes tending to make the struggle universal and permanent.

READING REFERENCES

CHENERY, WM.: *Industry and Human Welfare.*
LAUCK AND SYDENSTRICKER: *Conditions of Labor in American Industry.*
MARSHALL, L. C.: *Readings in Industrial Society.*
RUSSELL, BERTRAND: *Why Men Fight.*

PART I

UNREST ARISING FROM ECONOMIC CONDITIONS

CHAPTER II

HOURS OF LABOR

If there were any doubt about the length of the working day or week being a lively cause of unrest, a glance backward at the most important strikes of recent years would remove it. The great steel strike of 1919-20 was in large part a demonstration in behalf of a reduction in hours from twelve to eight. The bituminous coal miners, who have an eight-hour day, have been demanding six hours ever since their strike of 1920. The anthracite strike of 1923 revealed the fact that the eight-hour day had not become universal in that field, but it was made so by one of the clauses in the agreement that ended the strike. The railway shopmen's strike in 1922 had nothing to do with hours of work, but the greatest threat to the continuity of railway service ever made, that of the four train-service brotherhoods in 1916, arose out of a demand for the basic eight-hour day. The New England textile strike of 1922 arose, in part, out of a desire for a forty-eight-hour week.

Strike figures published by the government seem to show that the hour question does not cause as much trouble now as it did a quarter century ago. It was a factor in 25 per cent of the strikes occurring between 1881 and 1906,[1] and in the period 1916-21 it figured in 16 per cent of the strikes.[2] In both periods, however, it stood

[1] Twenty-first Annual Report, U. S. Commissioner of Labor.

[2] *Monthly Labor Review*, U. S. Bureau of Labor Statistics, May, 1922, p. 185. The strike figures for 1922 and later years are not strictly comparable with those for the earlier periods.

second only to the wage controversy as a direct or contributing cause of strikes.

There are three outstanding reasons for the demand on the part of the workers for a progressive shortening of hours of labor. The first is physical, and a protest against overwork. This was the dominant reason for the shorter-hour movement during the greater part of the nineteenth century, and is still the motive wherever the twelve-hour day has not yet been abandoned.

The second is economic. The eight- or nine-hour worker may not fear exhaustion, but he fears unemployment. He asks for shorter hours, therefore, in the hope that his job may come nearer to lasting through the year, and his income nearer to meeting his needs. This is the theory behind the six-hour demand of the coal miners.

No clause in the economic creed of the unionists has been subject to greater criticism than this. Employers and economists alike denounce the theory as being opposed to sound economics. There can be no prosperity, they claim, based upon restriction of output, and they are undoubtedly right from the long-run point of view and from the standpoint of society in general. The make-work policy of the unions not only tends to keep inefficient workers in the trade, but it increases costs and hence decreases real wages. As an immediate recourse, however, this theory of the unionists is not necessarily unsound. It may, for a time and under certain circumstances, work to their advantage. It is a policy which takes into account particular facts. The unionist has found out that in the past he has not been permitted to share in the advantages of long working hours. Moreover, experience has taught him that the tendency of wages is to approximate the prevailing standard of living.

He does not earn more by working longer hours, nor in the long run does he get less under a shorter workday. If his hours are increased he expects that later on there will be a cut in rates. If hours are decreased, a rise in the wage rate generally follows. Consequently, the slogan of the proponents of the shorter workday of the 'sixties, "Whether you work by the piece or work by the day, decreasing the hours increases the pay."

The third reason for the movement for shorter hours might be called cultural. It may not be so in the largest interpretation of the term, but it is a demand for leisure, on the one hand, to get rid of the monotony of modern industry, and, on the other, in order to get access to other satisfactions than those of work.

This aspect of the case is not always understood. To many active executives or business men the shorter-hour movement seems to be essentially the proposal of a lazy man. Such men often are inclined to boast of the length of their own working day. This may be due to certain differences between the two groups with respect to the kind of work done. Executives like to work long hours, not so much because they are fond of work itself, but because they have interesting things to do and they control their own time. A responsible executive may work sixteen hours at a stretch when he feels like it, or when necessity—self-defined—requires it, but as likely as not on some other day you will find him hastening from his office at noon with a bag of golf sticks swung over his shoulder. Men of this class have the sort of pleasure in work that is characteristic of the craftsman. An enforced reduction in hours *on any particular day* would be for them a hardship.

The average factory worker, however, does not have

these advantages. Even if his work were not under the direction of another, he could not work as long as fancy might dictate. His work is standardized. He is one of many. He must begin work and stop at the same time as hundreds or thousands of others. If he did get interested in his job and want to keep on with it instead of quitting at the end of eight, nine, or ten hours, he could not do so because the power would be cut off, or the flow of material, or the co-operation of the scores of other workers without whom he is helpless.[1]

OPPOSITION TO THE SHORT HOUR MOVEMENT

The attitude of the public toward hours of labor is modified very greatly by a prevalent view that a "day's work" is a uniform, standardized thing. When trade-unions try to get their hours reduced they are not candidates for a reduction in pay, and consequently usually ask for the same daily pay after the reduction as that received before. This strikes the average man as palpably unjust. It is unfair, he will tell you, to ask "ten hours' pay" for "eight hours' work." This, of course, is also the answer of the employer when such a request is made, and it is generally accepted as axiomatic by disinterested outsiders. It should be pointed out, however, that neither a day's work nor a day's pay is a fixed and absolute quantity, like a pound or a square yard. It may be fair to pay the old ten hours' wage for an eight-hour day. The question turns upon the fairness of the wage in the first place.

The theory just mentioned implies that work can be

[1] For a fuller discussion of this point see Webb, *Industrial Democracy*, part ii, chap. vi, "The Normal Day," p. 324.

measured off into definite, unchanging hour units; that not only is a day's work uniformly measurable, but that the work of an hour also is a "constant quantity." Under this theory it follows, of course, that the longest possible work-day is the most productive.

During the agitation in 1916 on the part of rail workers for an eight-hour day, the following statement was made by a railway president:

> The nation is confronted with more work than ever before —ships to build, factories to enlarge, railways to complete, new foreign business to be attracted, and help to be extended to the unfortunates on the other side. There are about 30,000,000 men at work; if they work ten hours a day, that is 300,000,000 hours a day, or 96,600,000,000 hours a year. If they work eight hours, it is 74,800,000,000 or a difference of 18,720,000,000 hours a year. At eight hours a day this means that about 7,400,000 more men must be employed to do the work that could be done by the 30,000,000, and where are they to come from?

Of course such an argument could be expanded and made to prove a good deal more. If it takes 30,000,000 men working ten hours a day to get the work of America done, why could not 15,000,000 men working twenty hours a day do it? If another hour's work means a proportional increase in output, why stop working at all? Why not solve the problem of scarcity of labor at any time by increasing hours without limit? The matter needs only to be stated for its absurdity to appear. Yet five years later a publication devoted to the employing interests repeated the very argument quoted above as a basis for its opposition to a reduction in hours.[1]

Another idea that persists among some employers is

[1] *Industry*, January 1, 1921, p. 3.

that wage-earners ought to work the longest possible hours in order to avoid forming dangerous or vicious habits. Some years ago a steel-company president told the writer that a twelve-hour day was an excellent thing for the development of character. "Overcoming obstacles," he said, "makes better men." The twelve-hour day he regarded as such an obstacle.

It is interesting to note that this argument was advanced nearly one hundred years ago at the very beginning of the short-hour movement, by the master carpenters of Boston. Their employees struck in 1825 to enforce their demand for a reduction in hours from twelve to ten. In a set of resolutions adopted by the employers on April 15, 1825, was one reading as follows:

Resolved, that we consider the measure proposed as calculated to exert a very unhappy influence on our apprentices—by seducing them from that course of industry and economy of time to which we are anxious to enure them. That it will expose the Journeymen themselves to many temptations and improvident practices from which they are happily secure while they attend to that wise and salutary maxim of Mechanics, "Mind Your Business." That we consider idleness as the most deadly bane to usefulness and honorable living; and knowing, (such is human nature), that where there is no necessity, there is no exertion, we fear and dread the consequences of such a measure upon the morals and well-being of society.[1]

The whole set of resolutions has a very modern flavor, and particularly the one which reads, "We cannot believe this project to have originated with any of the faithful and industrious Sons of New England, but are compelled

[1] Commons, *Documentary History of American Industrial Society*, vol. vi, p. 76.

to consider it an evil of foreign growth, and one which we hope and trust will not take root in the favored soil of Massachusetts. And especially that our city, the early-rising and industry of whose inhabitants are universally proverbial, may not be infested with the unnatural production."

These particular objections to the short workday are advanced, for the most part, by employers who have had no experience with it. There are other employers with another point of view based to a very considerable extent upon such experience. In some industries an eight-hour day has been tried and found entirely compatible with good character and with increased production.[1]

The effect of reducing hours from twelve to eight in the paper industry was made a subject of study by the United States Tariff Board in 1911. It was found that the labor cost per ton of manufacture went down in 1909, the year that the eight-hour day went into effect, from $4.35 to $3.73, and this took place without any radical change in equipment. "In other words," says N. I. Stone, who was chief statistician of the Board, "an increase in the hourly rate of wages to the extent of 50 per cent not only failed to result in a corresponding increase in the cost of labor per ton of paper, but was accompanied by an actual lowering of cost. . . . The change was due largely to the increase in the personal efficiency of the workers under the shorter day."[2]

From the standpoint of what is good for society, further considerations should enter in than the maintenance of production under a reduced schedule of hours. It is

[1] Goldmark, *Fatigue and Efficiency*, part i, chap. v; part ii, pp. 345 ff.

[2] *Annals of the American Academy*, September, 1919, p. 124.

of course an error to assume that production is *per se* the greatest desideratum. More goods are undoubtedly needed, but in many cases we do not need more goods as badly as we need better goods, and we need better citizens more than we need either. The evils of long hours, their effect upon the physical and nervous system, the predisposition to disease among overworked and fatigued human beings, are matters that have been brought out so effectively by others that it is not necessary to dwell upon them here.[1] There can be no argument over the statement that the well-being of society demands such a working day as will assure the opportunity for complete recuperation every day from that day's toil. The reasonable workday is undoubtedly that which will achieve the maximum of quality of goods and the health of human beings. If these two things are taken care of, quantity will undoubtedly take care of itself.[2]

The working day should be short enough not alone to conserve strength, but to give opportunity for recreation and mental refreshment. There are no absolutely hard and fast lines in such a matter. It might be difficult to prove in any given case that eight hours constitute such a day or that seven hours or nine hours do not. The mass of evidence seems to favor eight. At any rate, that is the goal toward which American industry seems to be tending.

THE FACTS AS TO HOURS OF LABOR

As long ago as 1791 the journeymen carpenters of Philadelphia adopted a resolution declaring that, "In future, a day's work, *amongst us,* shall be deemed to commence at six o'clock in the morning and terminate at six

[1] See list of books at end of chapter.
[2] See Basset, *When the Workmen Help You Manage,* p. 76.

o'clock in the evening of each day." The strike in which these men engaged in order to make their resolution effective was the first recorded strike of building-tradesmen in America, and it was lost. Their demand was not for a twelve-hour day, but for ten hours, for it was customary then to begin work before breakfast and two hours were generally allowed during the day for meals. They were willing, however, to work overtime for additional pay. Hours of labor in industrial enterprises in the United States, at least during the first fifty years of its history, were determined largely by the length of daylight.

The period 1820 to 1840 was marked by agitation and strikes for shorter hours. The carpenters of Boston struck for a ten-hour day in 1825. In 1833 the carpenters of Washington were protesting against "a custom that bound them to stand at their benches from fifteen to seventeen hours for the paltry sum of one dollar and thirty-seven and one-half cents." [1]

Cotton-mill operatives in Paterson, New Jersey, struck in 1835 to secure a reduction in hours from thirteen and one-half to eleven. After about a month the employers broke the strike by offering employment at twelve hours a day for five days and nine hours on Saturday.[2]

Workers in the building trades in Eastern cities had secured the ten-hour day by the end of 1835,[3] but factory workers did not fare so well. A committee of the Massachusetts legislature made an investigation of working hours in factories in 1845 and again in 1850. In the latter year the range in hours in Lowell factories was found to be from eleven hours nine minutes to thirteen

[1] Quoted in Commons, *History of Labor,* vol. i, p. 386.
[2] Commons, *History of Labor,* vol. i, p. 420, 421.
[3] *Ibid.,* p. 398.

hours one minute, with a yearly average of "11 hours and 58 2/3 minutes." [1]

The eight-hour movement did not get under way before the 'seventies and did not amount to a great deal until the 'eighties. One of the first important steps in this movement came in 1872, when 60,000 workers in various trades in New York struck for eight hours. Apparently the strike was successful for the most part.[2] The achieving of the eight-hour day became an important part of the program of the American Federation of Labor in 1886, the carpenters leading off. The whole building industry followed, and now the eight-hour day prevails in that industry. Emphasis at present is being placed on the length of the week, and in the East and North the forty-four-hour week has become general. The forty-hour week obtains in the building trades in Boston. It has been secured by the painters in New York and Seattle, and by the plasterers in Philadelphia, Providence, Seattle, and in the Borough of Queens, New York, and doubtless also occasionally in other parts of the country.[3]

In the bituminous coal fields the eight-hour day had become quite general before the beginning of the world war. This came about in part through union activity and in part through legislation in the coal-mining states. At the present time the eight-hour day is required by law in the coal mines in thirteen states.[4] The coal produced in

[1] Commons, *Documentary History of American Industrial Society,* vol. viii, p. 157.

[2] N. Y. *Tribune,* June 24, 1872. See also 16th report of U. S. Commissioner of Labor, p. 751. McNeill, *The Labor Movement,* pp. 142, 143.

[3] U. S. Bureau of Labor Statistics, Bulletin No. 259.

[4] Arizona, California, Colorado, Idaho, Missouri, Montana, Nevada, Oklahoma, Oregon, Utah, Washington, Wyoming, North Dakota.

these states is almost altogether bituminous. Before the late war the anthracite miners in general had a ten-hour day, but in 1916 an eight-hour agreement, covering most of the anthracite employees, was signed.[1]

In the printing trades the eight-hour day is nearly universal, and in many shops the seven-hour day has been established.

On the railroads there is no uniformity in hours, so far as train service is concerned. A train crew cannot go home at the end of a definite period of hours, as can a worker in a factory. They must bring the train into a terminal and the length of time that a run involves depends upon the degree of freedom from accident and unexpected delays there may be on any given day. In general the working day in freight service varies between ten and twelve hours. The passenger crews generally have a shorter day; some of those on particularly favored runs are able to complete them within six hours. The railroad men whose working day is fairly dependable are the switchmen in the yards and the workers in the shops. These men now have for the most part an eight-hour day.

In 1907 Congress passed a law which is still effective, fixing a maximum working day for men in train service at sixteen hours. This law took into account the fact that emergencies sometimes arise which necessitate very long periods of service. For the most part, train crews do not come anywhere near the sixteen-hour limit. Figures showing the number of instances where the sixteen-hour limit has been exceeded are, however, very striking. The Interstate Commerce Commission is charged with the duty of enforcing the sixteen-hour law. They require monthly reports from the railroads, therefore, giving the

[1] Bulletin No. 279, U. S. Bureau of Labor Statistics.

number of times that the sixteen-hour limit has been exceeded. During the years 1916-20, inclusive, the sixteen-hour limit was exceeded more than 522,000 times. When one considers that no report is made of trips that run under sixteen hours, however close they may have approached that limit, it becomes evident that there is probably a very great deal of excessive hours of service in the operation of trains.

The best figures obtainable concerning hours of labor are those relating to manufacturing. In 1909, 7.9 per cent of the factory workers had a forty-eight-hour week. In 1914, five years later, 11.8 per cent were working on that schedule, while the great majority worked nine to ten hours a day. The census of 1920 reveals a great change in hours of labor, with nearly half of all employees engaged in manufacturing working forty-eight hours or less.[1]

The war period was marked by the greatest acceleration in the eight-hour movement that it has ever known. This came about in part because labor was scarce and employers, in consequence, were not inclined to oppose de-

[1] Number of wage-earners in manufacturing establishments working each schedule of hours specified. (From Abstract of Census of Manufactures, 1914, p. 482, and Abstract of the Census of Manufactures 1919, p. 444.) The number of persons working between sixty and seventy-two hours, seventy-two, and over seventy-two hours, is not recorded separately for 1919.

Prevailing Hours of Labor per Week	*Average Numbers*			*Per Cent of Total*		
	1909	1914	1919	1909	1914	1919
Total	6,615,046	7,036,247	9,096,372	100	100	100
48 and under	523,652	833,330	4,418,693	7 9	11.9	48 6
Between 48 and 54	481,157	945,735	1,496,177	7 3	13.4	16.4
54	1,019,438	1,818,390	828,353	15.4	25.8	9.1
Between 54 and 60	1,999,307	1,543,018	1,248,854	30.2	21.9	13.7
60	2,017,280	1,487,801	827,745	30 5	21.1	9.1
Over 60	574,212	407,973	276,550	8.7	5.8	3.0
Between 60 and 72	344,011	247,798		5.2	3.5	
72	116,083	104,294		1.8	1 5	
Over 72	114,118	55,881		1.7	0.8	

mands for better working conditions. Another factor that encouraged the eight-hour movement was the attitude of the government. After the United States had entered the war in 1917 agencies were set up for the adjustment of disputes, and these threw their influence quite generally on the side of the forty-eight-hour week, with the result that several hundred thousand workers during this period secured an eight-hour day.[1]

THE CONTINUOUS INDUSTRIES

The figures just given show that the eight-hour day is far from universal. One of the reasons for its slow growth is the existence of the continuous industries, which operate day and night continuously, some of them for six days and some for seven days in the week. The principal continuous industries are sugar refineries, chemical factories, ice factories, coke ovens, blast furnaces and steel mills, paper and pulp mills, and public utilities. The principal reasons for their continual operation are either the technical nature of the industry or public necessity.

In the continuous industries it is impossible for a gradual reduction in hours to take place. The industry that operates with only one crew of men, working in the daytime, may well experiment with shorter hours. The textile mills have been able to reduce hours successively from twelve and fifteen to eleven, then to ten, nine, and eight. It has taken about a hundred years to go through this process, and there has been opportunity to note the effects and to make necessary adjustments. By the very nature of the case a continuous industry must be operated

[1] *Monthly Labor Review*, U. S. Bureau of Labor Statistics, November, 1919.

with more than one crew of workers. In such an industry, therefore, a gradual shortening of the working day is impossible. A continuous industry must be operated either with two crews working twelve hours each in the twenty-four, or with three crews working eight hours each. Any change from the two-shift system involves a reduction in working time at a single blow of 33⅓ per cent.

It is in the continuous industries that the twelve-hour day has tended to persist. The most important of these industries, and the one in which the twelve-hour day has received the most criticism, on account both of the nature of the work, and of the number of men employed, is the manufacture of iron and steel. In the summer of 1923 the American Iron and Steel Institute, representing the leading steel manufacturers, announced its decision to establish the three-shift system, with the eight-hour day, throughout the industry. At the time of writing, reports indicate that this decision is being put into effect as rapidly as could be anticipated, and with satisfactory results.[1]

READING REFERENCES

American Labor Legislation Review, vol. x, no. 4, December, 1920, pp. 264-276.

"Case for the Shorter Work Day, The." Supreme Court of the United States. Brief prepared under the direction of Felix Frankfurter, assisted by Josephine Goldmark, in the case of Bunting *vs.* Oregon, 243 U. S. 426.

CHENERY, WM. L.: *Industry and Human Welfare,* chap. v.

COMMONS, JOHN R.: *Documentary History of American Industrial Society,* vol. viii.

[1] *Iron Age,* September 20, 1923; September 27, 1923; November 15, 1923; January 3, 1924.

COMMONS AND ANDREWS: *Principles of Labor Legislation,* chap. v.

COMMONS AND ASSOCIATES: *History of Labor in the United States.*

DREW, WALTER: *The Real Problem of the Eight-hour Day.* Publication of the National Association of Manufacturers, No. 9.

DRURY, HORACE B.: *The Three-shift System in the Steel Industry,* Bulletin of the Taylor Society, February, 1921.

DRURY AND STOUGHTON: *The Twelve Hour Shift in Industry;* a report by the Committee on Work Periods in Continuous Industry, of the Federated American Engineering Societies.

FITCH, JOHN A.: *The Steel Workers.*

FLORENCE, PHILIP SARGENT: *Use of Factory Statistics in the Investigation of Industrial Fatigue.*

GOLDMARK, JOSEPHINE: *Fatigue and Efficiency.*

HOBSON, J. A.: *The Evolution of Modern Capitalism,* pp. 366-371; 341-342.

LEE, DR. FREDERICK S.: "Fatigue and Occupation" (in Kober and Hanson, ed. *Diseases of Occupation and Vocational Hygiene.*)

——— *Human Machine and Industrial Efficiency.*

Twelve Hour Shift in Industry, The: By the Committee on Work Periods in Continuous Industry, of the Federated American Engineering Societies.

U. S. Bureau of Labor Statistics, Bulletin 221. *Hours, Fatigue and Health in British Munition Factories.*

U. S. Public Health Bulletin No. 106, February, 1920. "Comparison of an Eight Hour Plant and a Ten Hour Plant." Report by Josephine Goldmark and Mary D. Hopkins on an investigation by Philip S. Florence and Associates, under the general direction of Dr. Frederick S. Lee.

WEBB, SIDNEY AND BEATRICE: *Industrial Democracy,* chap. vi.

CHAPTER III

THE WAGE-EARNER'S LIVING

THE requirements of the wage-earner are not essentially different from those of human beings in other walks of life. In a general way it may be said that what people require is first, economic security,—that is, assured access to the means of subsistence; and after that, satisfactions. If we are to ascertain what these requirements are in concrete terms it will be necessary to inquire what is meant by a living and by satisfactions.

One is said to be earning his "living" when he receives compensation in money sufficient to enable him to purchase the necessities of life,—that is, food, clothes, and shelter. If the working man is to do this he must receive a wage that will provide these necessities for himself and his family every day. If he does not work every day, the wage must be sufficient to purchase them on the idle days as well as on the working days. The average wage-earner does not work every day. There are various factors that enter into his experience which prevent that. These factors are commonly known as industrial hazards, and they include accidents, illness, unemployment, and old age.

There are no statistics of industrial accidents covering the United States as a whole. In attempting to estimate the number, it is necessary to depend upon such statistics as are available in the states where provision is made for

their collection. In 1913, Frederick Hoffman, statistician of the Prudential Insurance Company, estimated that every year in the United States there are 25,000 fatal industrial accidents, and that 700,000 wage-earners are so seriously injured as to be disabled for more than four weeks.[1] A more recent estimate of the annual number of industrial accidents, by the U. S. Bureau of Labor Statistics, is as follows:[2]

Death	21,232
Permanent total disability	1,728
Permanent partial disability	105,629
Temporary total disability	2,324,829

The Bureau estimates that over 227,000,000 working days are lost every year on account of industrial accidents, and that the total annual cost is over one billion dollars.

Another thing that interferes with the ability to earn wages every day is illness. The United States Commission on Industrial Relations estimated in 1914 that the wage-earners of the United States lose on the average nine working days every year on account of sickness. The New York State Department of Labor in 1919 made an investigation to discover the extent of illness prevailing at a given time. The study covered the period of July to December of that year and included 76,559 factory workers. Of these 8,761, 11 per cent of the whole, had been ill during the period, losing an average of 9.7 days, with an average wage loss of $36.73. The total number of days lost by all of these workers was 84,665, a period

[1] U. S. Bureau of Labor Statistics, Bulletin No. 157.

[2] Carl Hookstadt, *Monthly Labor Review*, U. S. Bureau of Labor Statistics, November, 1923.

of time equal to 282 years of 300 days each, for one wage-earner. The total wage loss was $321,815.75.[1]

A third industrial hazard is unemployment. Every wage-earner is subject to this risk. It has recently been estimated that there are at any time one and one-half million wage-earners in the United States unemployed.[2]

A fourth hazard, old age, is something to which every individual must look forward. It is nevertheless an industrial hazard along with accidents and unemployment, because the wage-earner has less opportunity to make provision for old age than do those in business and the professions. It is unnecessary to stress the latter point, for the thing to be noted is that old age means a curtailment of the working life. Consequently, the wage-earner's income must be sufficient to enable him to provide for old age, just as it must admit of the purchase of necessities during periods of idleness due to illness or unemployment.

These hazards must be taken into account in any consideration of what constitutes an adequate income. The wage-earner can be protected against them in three ways: through savings, through insurance, or through charity. As a matter of fact, in one of these three ways the bill is generally met, and accordingly it may be said that the wage-earner, regardless of his circumstances or wage, does secure a living income. If his risks are not covered by insurance, and if there is not enough in his pay envelope to provide him with the necessities through a normal period of existence, the additional sum is as a matter of fact provided; sometimes by the second generation assuming the burden, sometimes through the agency of

[1] N. Y. State Department of Labor, Special Bulletin No. 108.
[2] See chap. v.

public institutions, and sometimes through the activities of private relief societies.

SATISFACTIONS

It must be evident, however, that an income that merely allows for subsistence is not enough. A man wants more than bare necessities of life. His food requirements are not met merely by the provision of the necessary calories. He wishes palatable and nourishing food. He desires something more in the way of clothing than a covering. He wishes it to be adequate and satisfactory, and such as not to injure his self-respect in moving about among his fellows. His requirements imply not merely a shelter, but a home with all the indefinable satisfactions that that term suggests. And he requires further satisfactions than these. He wants something more than a place to work and something to do. He wants a job with real content and meaning in it, something that will afford him an opportunity for getting the satisfactions that should go with work. And he requires leisure,—that is, reasonable hours. Every normal human being has a natural craving for the satisfactions of work, but there are other satisfactions which can be obtained only at the end of the working hours. Recreation and play, for example, are as important as work to the development of the individual.

Then there is education. For the adult this means access to papers, magazines, books, art museums, the theater, the school, and the church. For the children education means equipment for life. The amount and kind of education to be secured by the children ought to be measured by each child's capacity instead of by the parent's economic

standing. Many a potential artist has been made into a bricklayer because his father had a limited income; and many an excellent machinist has been ruined by being prepared for the professions because his father was a banker.

What the wage-earner needs, therefore, is an income sufficient to purchase all of the reasonable comforts of life. There is evidence that this is not only what he needs, but what he wants. The constant drive for higher wages, the bitter fight against wage reductions, show the direction in which the wage-earners, consciously or unconsciously, are going. No recent statement from a labor source is more significant of this tendency than that of President Jewell of the Railway Department of the American Federation of Labor, who, in an address before the Railway Labor Board, said, that wages ought to be kept "at a level which will allow full human life, inclusive of art, literature, music and recreation, and sociability, such as is enjoyed by the well-to-do." This, he intimated, may bring about a situation where profits will be eliminated, at least temporarily; but "until that situation has been accepted, the conflict between capital and labor will continue." [1]

If the income of the wage-earner were adequate to purchase all of these satisfactions, the effect upon society as a whole would undoubtedly be tremendous. There would be great liberation of human energy. This would arise from the emancipation from petty worries that goes with an assured income. It would arise further because, on account of the adequate training and leisure that such an income would make possible, there would be brought into

[1] N. Y. *Evening Post*, March 27, 1922.

use for the public good the latent powers of all men. Resources, social and industrial, hitherto untouched and undreamed of, would be released for the use of mankind. Probably no discovery in the field of science has ever brought to the service of the human race such an increment of power and resources as would be made available if through the securing of an adequate income human energy could be set free.

Another important effect on society would be the bringing together of masses of men who are now compelled by force of circumstances to live apart. If all men were equally free to express themselves or to make the best possible use of their powers, social and economic stratifications as they now exist would have less significance and tend to fall away. Men who nowadays go their separate ways, little suspecting that men in other walks of life have the same impulses and desires as themselves, would be revealed to one another. Men who work with their hands might conceivably meet men who are engaged primarily in the work of direction on some other basis and for some other purpose than the economic. Religion and appreciation of art and literature would bring men together if the economic barriers were broken down, and there would result a social harmony which at the present time is almost inconceivable.

It is unnecessary to point out that wages on the basis here discussed are not paid to the wage-earners as a class anywhere in the civilized world. Ordinarily such an income is received only by executives, successful men in the professions and in business, and the beneficiaries of inherited estates. This is due, in part, to inequality in the distribution of wealth. But income is also limited by the amount of goods available for distribution. Considera-

tion is given in the next chapter to the facts concerning the wage-earner's income and to some reasons for its apparent inadequacy.

READING REFERENCES

See end of Chapter IV.

CHAPTER IV

THE WAGE-EARNER'S INCOME

AN income is important on account of what it will buy. The number of dollars taken in during a year has little significance except in relation to prices. We often forget this and speak of "high wages" or "low wages" in terms of money alone, regardless of the fact that a "low" wage in one place or time may purchase more goods than a "high" wage will at another place or time. Just now, for example, a German workman may be able to reckon his income in millions of marks and still be living in poverty.

In general, we need to know two things about wages in order to get an insight into the well-being of the wage-earning class. First, do the wages received at any given time enable the recipient to purchase the necessities and some of the satisfactions of life; and second, is the tendency of wages over a period of years in the direction of an increasing or a decreasing purchasing power?

TENDENCIES IN REAL WAGES

Taking the second of these questions for discussion first, we find that there is very little difference of opinion among statisticians as to the period immediately before the Great War. W. I. King published in 1915 the results of a study of wages and prices from 1850 to 1910.[1] Wage statistics were secured from the decennial census

[1] *Wealth and Income of the People of the United States.*

reports and prices from the publications of the United States Bureau of Labor Statistics. In a table published on page 168 of his book King shows that after a decline in 1870 average annual wages in the United States, in terms of money, rose steadily from $323 in 1880 to $507 in 1900. At the same time the purchasing power of these wages, when reckoned in terms of prices prevailing in the decade 1890-99, rose from $244 in 1880 to $410 in 1900. In the next decade, however, despite an increase in money wages of $90, there was a decline of $9 in purchasing power; the wage-earner's income in terms of what it would buy being represented in 1900 by $410 and in 1910 by $401.

At about the same time another study was made, bringing the figures down to 1913.[1] After an elaborate comparison of wages and prices on the basis of Bureau of Labor Statistics figures, the author, I. M. Rubinow, reached the conclusion that the purchasing power of wages "probably increased slightly between 1870 and 1890. But since 1900 it has been rapidly falling. The purchasing powers of wages in 1913 are not much higher than they were in 1870. . . . The conclusion is inevitable that a much smaller share of the value reaches the wage-worker now than did twenty or thirty years ago."

Similar conclusions appear to have been reached by other students of the standard of living.[2] Professor E. B. Woods, writing in 1920, said: "If we consider only the years of the present century, therefore, we are prob-

[1] I. M. Rubinow, "The Recent Trend of Real Wages," *American Economic Review*, December, 1914, p. 793.

[2] H. P. Fairchild, "The Standard of Living, Up or Down," *American Economic Review*, March, 1916, pp. 9-25.

Lauck and Sydenstricker, *Conditions of Labor in American Industries*, 1917, pp. 378 ff.

Parmelee, M. F., *Poverty and Social Progress*. 1916, p. 363.

ably justified in concluding that the American worker found himself at the outbreak of the World War handicapped by a slight but unmistakable decline in the purchasing power of his wages. They sufficed to buy somewhat less than had the wages of the year 1900." [1]

When we come to the war period the situation is not quite so clear. A study made by Paul Douglas and Frances Lamberson, which was published in the *American Economic Review* for September, 1921, brought Rubinow's pre-war figures down through the year 1918. In summing up their conclusions the authors say that "all the evidence seems to indicate that at the termination of the Great War the return in commodities which the American workman received for an equal length of time worked (one hour) was from 10 to 20 per cent less than it was in the decade 1890-99 and from 7 to 17 per cent less than it was before the sharp upward movement of prices in 1916. The purchasing power of the established week's work, moreover, was from 20 to 30 per cent less than in the 'nineties, and from 10 to 20 per cent less than in 1915. American labor as a whole, therefore, cannot legitimately be charged with having profiteered during the war. Rather, like Alice in Wonderland, it was compelled to run faster in order to stay in the same place."

Rubinow and Douglas and Lamberson used wage rates as the basis of their comparison with figures of the cost of living. A somewhat different conclusion regarding the trend of wages down to 1918 was reached by W. I. King, using average annual earnings instead of rates. By 1918, he says, "the employees in most industries were getting as large a slice of the products as before the war, and in

[1] E. B. Woods, "Wages and the Cost of Living." *Annals*, May, 1920, pp. 135-147.

some cases a decidedly larger slice." [1] Doctor King's figures of annual earnings in the principal industrial groups and their indices of purchasing power are presented in a table,[2] a part of which is reproduced below:

MONEY WAGES RECEIVED BY INDUSTRIES AND YEARS

Year	Mining	Factories	Transportation	Agriculture	All Industries
1913	755	705	762	328	723
1914	649	616	721	321	674
1915	656	653	727	330	697
1916	814	873	842	357	831
1917	1,025	1,022	1,017	463	961
1918	1,283	1,148	1,286	590	1,078

INDICES OF PURCHASING POWER OF WAGES

1913	100.0	100.0	100.0	100.0	100.0
1914	85.2	86.5	93.7	96.6	92.4
1915	84.4	89.9	92.7	97.6	93.6
1916	98.0	112.6	100.4	99.1	104.4
1917	105.3	112.3	103.5	109.5	103.0
1918	107.5	103.0	106.8	113.7	94.3

The other industries included in the original table are manufacturing by hand, three groups of transportation industries, banking, government, and "unclassified industries." Despite the increase in real wages for the industries given in the table above, there was a decline in the real wages paid in "street railway, electric light and power, telegraph and telephone companies," in banking, in government employ, and in "unclassified industries." Hence the decline shown for "all industries." The index num-

[1] National Bureau of Economic Research, *Income in the United States*, p. 94.

[2] *Income in the United States*, pp. 102-103.

bers for public utilities were: 1913, 100; 1914, 99.7; 1915, 95.4; 1916, 98.1; 1917, 90.4; 1918, 82.0.

THE POST-WAR PERIOD

The figures given above were for the period ending in 1918, the year in which hostilities came to an end. The effect of the war on prices continued unchecked, however, until 1920, when the cost of living reached its peak. The index number of the cost of living published by the United States Bureau of Labor Statistics indicated a rise of 116.5 per cent for the United States as a whole in June, 1920, over the level of 1913. That this rise was fairly uniform throughout the country is shown by figures published by the Bureau for eighteen cities scattered over the entire country.[1]

The average increase in the cost of living from 1914 to 1920 in these eighteen cities was 112.8 per cent. It is possible to compare with this the rise in union rates in some twenty-four trades during the same period. The United States Bureau of Labor Statistics has published

[1] Below are the figures for the cities as published in the *Monthly Labor Review* for September, 1920, pp. 75-80. The figure given is in each case the percentage of increase in the cost of living for June, 1920. This percentage is based not on 1913, but on December, 1914. In that month the general cost of living had increased 3 per cent. The figure for the United States as a whole that is comparable with these figures is, therefore, 110.2.

Baltimore 114.3%	Mobile 107.0%
Boston 110.7%	New York.... 119.2%
Buffalo 121.5%	Norfolk, Va... 122.2%
Chicago 114.6%	Philadelphia .. 113.5%
Cleveland 116.8%	Portland, Me.. 107.6%
Detroit 136.0%	Portland, Ore.. 100.4%
Houston, Tex. 112.2%	San Francisco.. } 96.0%
Jacksonville .. 116.5%	Oakland ..... }
Los Angeles... 101.7%	Savannah 109.4%
	Seattle 110.5%

the union rate per hour for these trades over a period of years for a group of cities including the eighteen for which cost-of-living figures are given.[1] When the percentage of increase between 1914 and 1920 is worked out for each trade in each city for which figures are given and then averaged for each trade, it appears that the average increase in wage rates was as great as the average increase in the cost of living in only five of the twenty-four trades represented. Despite this showing, it is probable that most of the workers in these trades enjoyed a "real income" greater than that of 1913. Overtime at higher rates of pay was quite general during the war, and the rate per hour is apt, as a result, to be somewhat misleading.

The table on page 38 shows that if union rates had not caught up with the cost of living by 1920 they did so shortly thereafter. They continued to rise in 1921, when general prices were falling, and while they declined in 1922 they represented a purchasing power well above that of 1913. The index numbers given are those of the U. S. Bureau of Labor Statistics. The cost-of-living indices are for the United States as a whole; those for union rates are based upon data representing eleven different occupations in sixty-six of the principal cities of the United States.

Perhaps the best continuous record of the trend of wages appears in the Industrial Bulletin of the New York State Department of Labor. Statistics of employment, together with average earnings, have been published each month by the Department since June, 1914, based on the reports of manufacturers with upward of half a million

[1] *Monthly Labor Review*, U. S. Bureau of Labor Statistics, October, 1920, pp. 75-92.

INDEX NUMBERS OF THE COST OF LIVING AND OF UNION WAGES, RATES AND HOURS

	Cost of Living [1]	Rates of Wages Per Hour [2]	Full Time Hours Per Week [2]	Rates of Wages Per Week, Full Time [2]
1913, average	100.0	100.0	100.0	100.0
1914, December ...	103.0	102	100	102
1915 " ...	105.1	103	99	102
1916 " ...	118.3	107	99	106
1917 " ...	142.4	114	98	112
1918 " ...	174.4	133	97	130
1919 " ...	199.3	155	95	148
1920, June	216.5	199	94	189
December ...	200.4			
1921, December ...	174.3	205	94	193
1922, December ...	169.5	193	94	183
1923, December....	173.2	211	94	199

employees. In the table on page 39 average weekly earnings in factories in New York City and in New York State outside of the city are presented for different dates from 1914 to 1923. Taking 1914 as a base, the index number of wages for each succeeding date has been worked out, and these are compared with the cost-of-living indices. The wage figures for factories "outside New York" are compared with Buffalo cost-of-living figures, because there is no cost index for the state as a whole.[3]

[1] *Monthly Labor Review*, February, 1924, p. 94.

[2] *Monthly Labor Review*, December, 1923, p 108. The index numbers of wage rates and hours are general averages for the years indicated. The hours index shows a steady shortening of the working day, which explains the discrepancy between hourly wage rates and full-time weekly rates.

[3] The wage figures are taken from the Industrial Bulletin of the New York State Department of Labor. The cost-of-living indices are those of the U. S. Bureau of Labor Statistics.

Date	*New York City*			*Outside New York City*		*Buffalo*
	Average Weekly Earnings	Index of Earnings	Index of Cost of Living	Average Weekly Earnings	Index of Earnings	Index of Cost of Living
December, 1914	$12.81	100.0	100.0	$12.40	100.0	100.0
" 1915	13.45	104.9	102 0	13.52	109.0	103.5
" 1916	14.93	116.5	114.9	15.83	127.6	124.4
" 1917	16.61	129.6	144.7	18.32	147.7	151.1
" 1918	22.11	172.5	177.3	23.77	191.7	180.9
June, 1919	22.93	179.0	179.2	22.26	179.5	184.2
December, 1919	27.58	215.3	203.8	25.63	206.7	202.7
June, 1920	28.73	224.2	219.2	28.79	232.1	221.5
December, 1920	28.89	225.5	201.4	28.03	226.0	201.7
May, 1921	27.45	214.2	181.7	24.85	200.4	180.3
September, 1921	27.36	213.6	179.7	23.59	190.2	178.4
December, 1921	26.56	207.3	179.3	23.91	192.8	176.8
March, 1922	27.03	211.0	169.9	23.04	185.8	169.9
June, 1922	26.68	208.2	170.7	23.90	192.7	168.6
September, 1922	27.43	214.1	169.7	24.71	199.2	171.0
December, 1922	27.43	214.1	174.2	25.82	208.2	173.9
March, 1923	28.49	222.4	172.2	26.06	210.1	172.5
June, 1923	28.42	221.8	172.6	27.59	222.4	174.1
September, 1923	28.00	218.6	175.4	27.11	218.6	178.2

These figures show that in New York City earnings rose with the cost of living in 1915 and 1916, lagged behind when prices rose more sharply in 1917, but caught up again in 1919, and after that continued at a higher index figure than that of the cost of living. A comparison of "upstate" earnings with Buffalo costs shows a somewhat similar tendency, but this comparison is, of course, less dependable.

It is very difficult to draw final and definite conclusions as to the course of real wages since 1913. The trend in the cost of living is clear enough. Prices began rising rapidly in 1915, reaching their peak in 1920, and then declining steadily until 1922. In the latter part of 1922 they rose somewhat, then declined, and rose again toward the end of 1923. The movement of wages is more difficult to trace. Such data as are available, however, seem to indicate that labor generally suffered a decline in purchasing power during the period 1914-17; wages began to catch up in 1918, and for the most part caught up with prices somewhere between 1919 and 1920. At the peak in 1920 the wage index was in general above the price index, and has remained above it. Union scales were retarded in their rise as compared with the general wage movement, and reached their peak in 1921. Since that time their decline has also been retarded, and union scales remain relatively high.

THE STANDARD OF LIVING

The more important question, however, is whether labor in general has been receiving a living wage. It is of interest to know whether wages rose and fell with the cost of living, but the thing of chief concern to the wage-

earner is that there shall be at any given time enough money in his pay envelope to enable him to purchase the necessities of life and some of the satisfactions. To determine this question we shall again have to consider both the period before the war and the war period itself.

Many studies were made in the decade before the war of the cost of maintenance of a wage-earning family. It was generally agreed that such a family consisted of father, mother, and three children below the wage earning age. The studies were for the purpose of determining a "living wage," a "fair standard," a "fairly proper standard," a "normal standard," or a "standard of decency." The names of Ryan, More, Streightoff, Chapin, Nearing, Byington, and others instantly suggest research of a thorough and painstaking character in this field. We may take some typical conclusions of these students as to the cost of living and compare them with typical data available as to wages paid.

In 1903 the Rev. John A. Ryan published his book, *A Living Wage,* in which he stated that for a family of six or seven "anything less than $600 per year is not a living wage in any city in the United States." He expressed the opinion that that sum was "probably" a living wage in the South, possibly so in the moderately sized cities of the North, East, and West, but in some of the largest cities not a living wage.[1] A little earlier, in 1901, the U. S. Bureau of Labor Statistics made a study of 25,440 wage-earning families scattered through thirty-three states. It found their average annual expenditure to be $699.[2]

In 1903-04 a study was made by the Census Bureau of

[1] *A Living Wage,* p. 150.
[2] Eighteenth Annual Report United States Commissioner of Labor.

about three and a quarter million wage-earners. Of these, 2,619,025, or 79 per cent were men; 588,599, or 18 per cent, were women; and 90,167, or about 3 per cent, were children.[1] Of the men, actual or potential heads of families, 62 per cent earned less than twelve dollars a week. They earned, in other words, less than $624 a year if they worked full time. Since the average wage-earner loses a certain amount of time every year on account of illness, accident, or unemployment, it is certain that the actual income of the average individual in this group was less than $600. They received, therefore, less than the amount fixed by Doctor Ryan as essential to a living for a family of the size mentioned anywhere in the United States, and more than one hundred dollars less than the amount per family actually expended by the group studied by the Bureau of Labor Statistics.

In 1907 a committee on Standard of Living, of the New York State Conference of Charities and Correction, estimated after a preliminary investigation that "$825 is sufficient for the average family of five individuals comprising the father, mother, and three children under fourteen years of age, to maintain a fairly proper standard of living in the Borough of Manhattan." [2] Robert C. Chapin, whose study was the basis for the foregoing estimate, after further research, announced in 1909 that for New York City "an income under $800 is not enough to permit the maintenance of a normal standard," [3] but that "$900 or over probably permits the maintenance of a normal

[1] *Census of Manufactures*, 1905, part iv, pp. 645-648.
[2] Chapin, *The Standard of Living in New York City*, p. 281.
[3] *Ibid.*, p. 245.

standard, at least as far as the physical man is concerned." [1]

Yet of the 391 New York families whose income and expenditures were studied by Mr. Chapin, 176, or 45 per cent of the whole received less than $800, and 249, or 63.7 per cent received less than $900.[2]

No other wage study exists the results of which are fairly comparable with the Chapin estimate of $900 as the amount necessary to provide a basis for the maintenance of a normal standard, but it is significant that the average wage paid in manufacturing enterprises in the city of New York in 1909, according to the United States Census, was $584. In Pittsburgh, where the cost of living in 1909 was approximately the same as in New York City, the average income of wage-earners in manufacturing was $592. In the steel industry, which affords a better comparison because the employees are almost altogether adult males, the average wage in Pittsburgh in 1909 was $613.50.

Scott Nearing stated in 1913 that a family of five in the industrial towns of the Northern states could not maintain a "fair standard of living" with an income below $750, and that $850 is necessary in the large cities.[3] In 1915 the same author, after examining a number of government reports based on a study of wages in various industries, reached the conclusion that "the great majority (almost nine-tenths) of the adult males receive wage rates of $1,000 per year or less. An equal proportion of females receive less than $750. The wage rates of four-fifths of the males fall below $750, a third below $500." [4]

[1] Chapin, *The Standard of Living in New York City*, p. 246.
[2] *Ibid.*, p. 236.
[3] *Financing the Wage Earner's Family*, p. 97.
[4] Scott Nearing, *Income*, p. 106.

These figures are not complete, and the wage figures do not afford an altogether satisfactory basis for comparison with the estimates of the cost of living. At the same time it is difficult to avoid the conclusion that in the leading industries of the country the average wage-earner of this period was in receipt of an annual income that was somewhat below the most competent estimates as to the amount necessary for the decent support of a family of average size.

THE PERIOD OF RISING PRICES—1914-1920

A number of estimates made by different authorities in the earlier part of this period ranged from $825 to $1,200, as the amount necessary to support an average family in health and decency. It is unnecessary to pay very much attention to these estimates so far as the earlier period is concerned, because they were based upon conditions prevailing before the beginning of the rapid increase in prices which marked the year 1915. Few, if any, studies were made that took into account the increased cost of living until the year 1918. In that year the United States Bureau of Labor Statistics made a study of the actual expenditures of over 12,000 working-class families in ninety-two industrial centers in different parts of the country with an average of 4.9 persons per family. It was found that the average annual expenditure of these families was $1,434.36.[1]

In the same year Professor W. F. Ogburn made an estimate of the cost of living for the National War Labor Board based upon studies made in urban centers in the east. Professor Ogburn submitted two estimates. One

[1] *Monthly Labor Review*, August, 1919, p. 118.

he called the "minimum of subsistence level," and the estimate was $1,386. The other estimate was for the "minimum comfort level," which provides "slightly more for comforts, insurance, clothing, and sundries." This estimate was $1,760.

Income figures that are comparable with these budget estimates are hard to find. A perfect basis of comparison would be the actual earnings in 1918 of heads of families containing five persons, three being children below working age. But no such figures are to be found. Instead, we have averages for entire industries or groups of industries. These figures of average earnings are not satisfactorily comparable because they represent all classes of workers and not male heads of families alone. The figures for manufacturing are particularly unsuited for purposes of comparison because women and minors are included, and the figures are therefore lower than an average for heads of families would be.

Some light is thrown on the situation, however, if we secure average earnings in industries where the employees are largely adult males. Such industries are mining and transportation. The average income in these industries in 1918, according to the National Bureau of Economic Research, was, respectively, $1,283 and $1,286,[1] about $100 less than the amount necessary according to the Ogburn estimate to meet the requirements of the "minimum subsistence level."

The wage figures for the state of New York indicate an average weekly wage for manufacturing industries in 1918 of $20.35. If we multiply this sum by fifty-two, thereby assuming an absolutely full year's work for the employees represented, we have a figure of $1,058 to com-

[1] *Income in the United States,* pp. 102, 103.

pare with the Ogburn estimate of $1,386 as the minimum of subsistence. These figures are not absolutely comparable, for the reason given above. It is possible, however, to get an average for those industries where the employees are predominantly adult males. In the table below there are included from the New York data on wages those industries in which, according to the United States Census of 1920, more than ninety per cent of the wage-earners are males over sixteen years of age. The figure for average earnings opposite each industry was derived from the figures of average weekly wages as presented by the Industrial Bulletin of the New York Department of Labor for each month in 1918:

Lime, cement, and plaster	$1,200.98
Brick, tile, and pottery	953.33
Brass, copper, aluminum, etc	1,149.07
Pig iron and rolling mill products	1,660.19
Structural and architectural iron work	1,355.90
Firearms, tools, and cutlery	1,185.51
Cooking, heating, and ventilating apparatus	1,200.79
Machinery	1,176.85
Automobiles, carriages, and airplanes	1,259.09
Cars, locomotives, and railway repair shops	1,461.03
Boat and shipbuilding	1,490.10
Wood manufactures	946.18
Leather	1,006.03
Chemicals, oils, paints, etc	1,041.60
Paper	1,150.37
Flour, feed, and other cereal products	1,141.57

In only three of these sixteen industries—the iron and steel industry, railway shops, and shipbuilding—did the indicated average income equal or surpass the Ogburn

estimate of $1,386 as the cost of a bare subsistence. None of them reached the "comfort" level of $1,760.

It is possible also to draw some inferences from the awards of the National War Labor Board. It was to assist them in their wage awards that Professor Ogburn made the estimates referred to above. If we assume an eight-hour day and 300 working-days to the year, the Board would have been obliged to establish a rate of fifty-eight cents an hour for common labor to enable a man to achieve an income of $1,386. For the comfort level of $1,760 an hourly rate of seventy-three cents would have been required. Yet most of the awards were around forty cents or forty-two cents. As a matter of fact, most of the wage-earners for whom awards were made by the Board were working ten hours instead of eight hours per day. In most of the awards it was provided that they should receive pay at the rate of time and one-half for work done beyond eight hours. With a forty-two cent rate, a man working 300 days on this basis would receive exactly the sum estimated as the minimum of subsistence. It is to be presumed, therefore, that the minimum rate established by the Board did provide a subsistence income, but in no case did it approach the comfort level proposed by Professor Ogburn.

For later years only a few comparisons are possible. Some interesting ones may be made for certain localities on the basis of studies made by the United States Bureau of Labor Statistics and certain other agencies, both public and private.

In June, 1920, the U. S. Bureau of Labor Statistics published a commodity budget. Without attempting to compute their cost, it presented a list of the commodities deemed necessary "to maintain a worker's family of five

Community	*Date*	*Cost of Living*	*Weekly Earnings Highest Paid Group* [1]	*Annual Income (Weekly wage x 52)*	*Industry in Which Highest Wage Was Paid*
New York	Nov., 1920	$2,632.68	$41.80	$2,173.60	Furs and fur goods
New York	Mar., 1921	2,333.99	40.78	2,120.56	Furs and fur goods
Brooklyn	Apr., 1921	2,404.34	42.20	2,194.40	Miscellaneous stone and mineral products
Schenectady	June, 1921	2,067.02	35.75	1,859.00	Cars, locomotives, and railway repair shops
Rochester	July, 1921	2,262.76	33.07	1,719.64	Water, light, and power
San Francisco	Mar., 1922	2,533.82	40.00 or over	2,080.00 [2]	
Los Angeles	Dec., 1922	2,573.09	40.00 or over	2,080.00 [2]	

[1] The wage figures used for New York cities were obtained from the Industrial Bulletin published by the New York State Department of Labor. In each case the highest average wage paid in any

in health and decency." [1] The Labor Bureau, Inc., of New York, a private agency engaged in labor research, has at different times priced these commodities in "typical working-class sections" in ten different cities, and has thereby established a theoretical figure of the cost of living for these cities. In the table on page 48 the cost of living figures so obtained are placed alongside the possible income of the highest-paid group in the same community for which wage figures from an official source are available.

industry was taken for the month in which the cost of living study was made. In the case of Brooklyn and New York the figure was taken from the statistics of wages in "New York City." For upstate cities the wage figure was taken from the statistics of wages "Outside New York City." Wage figures in San Francisco and Los Angeles were obained from the Twentieth Biennial Report of the California Bureau of Labor Statistics, 1921-22, pp. 228 and 291. Summary tables on these pages show the number of wage-earners in these two cities falling in different weekly income groups, from "Under $5" to "$40 and over." Only the last group is taken for comparison. In San Francisco, out of 22,651 wage-earners in 764 establishments, 4,450, or 19.6 per cent of the whole were in the group receiving forty dollars per week or over. In Los Angeles, out of 17,985 in 429 establishments, 2,565, or 14.2 per cent, of the whole received forty dollars or over.

[2] The wage figures for New York cities were compiled for the same month and year as the cost-of-living figures, but the wage figures for San Francisco and Los Angeles represent an average for the year 1921, while the cost-of-living data were secured for the two cities respectively in March and December, 1922. The only effect of this apparent confusion in dates is to emphasize the discrepancy between wages and living costs. In both cities costs declined materially between the time when the wage data were secured and the time that the cost-of-living figures were taken. In San Francisco the decline in the cost of living from the average of 1921 to March, 1922, was 11.4 per cent, while the decline in Los Angeles from the average of 1921 to December, 1922, was 3.6 per cent.

Monthly Labor Review, U. S. Bureau of Labor Statistics, pp. 94 and 96.

[1] *Monthly Labor Review*, U. S. Bureau of Labor Statistics, June, 1920, pp. 1-18.

These figures seem to indicate that in these cities even the highest paid wage-earners failed to earn the amount considered essential for reasonable family maintenance. The majority of the workers found their earnings still further short of the goal, and the lowest paid groups earned only from a third to one-half the standard budget figure.

The National Industrial Conference Board, a federation of employers' associations, has at different times made cost-of-living studies in different localities. In the table on page 52 there are presented in the first four columns the Board's estimate of the minimum income necessary to maintain a family of five in the given localities and at the given dates. In the remaining columns earnings of male wage-earners are presented for purposes of comparison. The data for earnings are also taken from the reports of the National Industrial Conference Board. The estimated cost of living in each locality may be thus compared with the earnings received at a date as near as possible to that of the estimate, in the largest industry in each of the given localities. The figures for annual earnings were secured by multiplying the Board's figures for weekly earnings by fifty-two. The last column shows that the largest possible income fell short of the estimate of the cost of living in seven of the nine localities covered. The fact that both sets of figures—cost of living and earnings—were compiled by the same organization tends to increase their significance. It should be noted, also, that the annual income figure that is used for comparison with cost of living is in every case higher than it should be, owing to the fact that probable unemployment is disregarded.

A few words of explanation with respect to the make-up

of this table are necessary. The National Industrial Conference Board in its earlier reports on earnings in various industries gave the average earnings of men and women separately. The figure given in the table therefore for "cotton manufacturing, North," and "woolen manufacturing" in October, 1919, is the Board's figure for all male workers. In the later reports, however, separate reports are made for male, unskilled; male, skilled; and women. In order to secure an income figure that would represent the earnings of a head of a family, the figures for males, skilled and unskilled, have been combined. The average weekly income of each group was multiplied by the number in that group and the sum of the figures thus obtained divided by the total number of male wage-earners. The effect of this process is that the average secured is probably overweighted by the earnings of skilled men. To illustrate: The Board reported 50,086 unskilled male wage-earners in foundries and machine shops earning an average weekly wage of $28.53, and 142,530 skilled males earning an average wage of $34.10 in June, 1920. By using the method described above an average is secured for all male wage-earners of $32.65.

Whenever possible, the Board's figures have been checked by comparison with other wage studies. The Massachusetts Department of Labor in its report on Statistics of Manufactures for 1919 gives wage figures for cotton manufacturing which may be combined into an average of $24.64 for males over eighteen. This would give a possible annual income of $1,281.80, which is $14.04 above the Board's cost of living figure for Fall River. The average for woolen manufacture derived from the same source is $27.02 for males, indicating a

Place	*Date*	*Income necessary to maintain family of five according to fair minimum standard*		*Earnings of male wage-earners at nearest corresponding date in industries characteristic of locality*				*Extent to which actual income is greater or less than needed income*
		Weekly	Annual	Industry	Date	Weekly	Maximum Possible Annual	
Fall River, Mass.[1]	Oct., 1919	$24.38	$1,267.76	Cotton manufacturing, North [8]	Oct., 1919	$22.18	$1,153.36	—$114.40
Lawrence, Mass.[2]	Nov., 1919	26.65	1,385.79	Woolen manufacturing [8]	Oct., 1919	26.34	1,369.68	— 16.11
Greenville, S. C.[3]	Jan. and Feb., 1920	26.80	1,393.60	Cotton manufacturing, South [9]	June, 1920	23.34	1,213.68	— 179.92
Pelzer, S. C.[3]....	Jan. and Feb., 1920	26.43	1,374.09	Cotton manufacturing, South [9]	June, 1920	23.34	1,213.68	— 160.41

Charlotte, N. C.[2]	Jan. and Feb., 1920	27.66a 29.34b	1,438.03a 1,525.67b	Cotton manufacturing, South [9]	June, 1920	23.34	1,213.68	—224.35a —311.99b
Cincinnati, Ohio [4]	May, 1920	32.55	1,692.50	Foundries and machine shops [9]	June, 1920	32.65	1,697.80	+ 5.30
Worcester, Mass.[5]	June, 1920	33.34	1,733.38	Foundries and machine shops [9]	June, 1920	32.65	1,697.80	— 35.58
Detroit, Mich.[6] . .	Sept., 1921	32.66	1,697.95	Automobiles [9]	Sept., 1921	26.46	1,375.92	— 322.03
Scranton and Wilkes-Barre, Pa.[7]	Feb., 1922	25.68	1,335.19	Anthracite coal industry [10]	Oct., 1921	35.89	1,866.28	+ 531.09

[1] National Industrial Conference Board, Research Report No. 22.
[2] *Ibid.*, No. 24.
[3] National Industrial Conference Board, Special Report No. 8.
[4] *Ibid.*, No. 13.
[5] *Ibid.*, No. 16.
[6] *Ibid.*, No. 19.
[7] *Ibid.*, No. 21.
[8] National Industrial Conference Board, Research Report No. 31.
[9] *Ibid.*, No. 62.
[10] *Ibid.*, No. 47.
[a] Company house.
[b] Non-company house.

possible annual income of $1,405.04, which is $19.25 above the Board's cost-of-living figure for Lawrence. The average of $23.34 for cotton mills, South, may be compared with an average of $24.13 for male workers in cotton mills in South Carolina derived from the *Monthly Labor Review,* September, 1922, pp. 112-114. This would give a maximum possible income of $1,254.76.

No wage figures comparable to those of the Board for foundries and machine shops have been discovered. The Board's wage figures for automobile manufacturing seem too low. The *Monthly Labor Review* for April, 1923, gives an average of $33.19 for male wage-earners in that industry in 1922, which would give a possible annual income of $1,725.88, and the 1919 average for all workers in the industry according to the United States Census was $1,431. Even the latter is larger than the Board's figure for males only in 1921. On the other hand, the anthracite wage figure given corresponds very closely to that of the U. S. Bureau of Labor Statistics.

THE INADEQUACY OF THE WAGE EARNER'S INCOME

The figures that have been presented in this chapter with a view to throwing light upon the adequacy of the wage-earner's income are confessedly incomplete. Consequently, in the exact form in which they are presented they are not to be taken too seriously. Standard-of-living figures, for example, merely represent the opinion or guess of some individual as to the amount necessary to maintain a family in accordance with certain standards which, in his opinion, are "proper" or "necessary," or "decent." No budgetary standard can be accepted as final unless one

is certain that there is general agreement with each assumption made by the original compiler. Since no such general agreement exists, and since there is no scientific test by which such a matter can be finally determined, it is a hazardous thing to make positive statements concerning the cost of living.

As a matter of fact, as Ogburn has pointed out, there is not one standard of living, but many. Nevertheless, attempts have been made in this chapter to compare income with various estimates of the cost of living, and there seems to be ample justification for such comparisons. While it is true that a "living" is not a measurable quantity like pounds or yards, it is also true that those who have attempted to measure it have done so in terms so low that comparisons of the sort attempted here are really significant. Compilers of budgetary standards have been far more apt to err on the side of moderation than on the side of over-generosity. Even a cursory examination of the quantities enumerated in the typical budget reveals ample evidence of a studied conservatism. In the budget worked out by the U. S. Bureau of Labor Statistics, for example, a man is allowed one-third of a suit each winter. That is, one winter suit every three years. A woman is allowed one-half of a winter hat. She is allowed eight pairs of cotton stockings a year. When one comes to examine the details of these budgets he is inclined to wonder, not whether the investigator was over-enthusiastic, but whether it is possible for any family to scale down its consumption sufficiently to keep within the limits indicated.

We may say, then, of the standard budgets, that while they cannot be depended upon to measure the cost of

living, they are useful in determining whether or not a given income is reasonably adequate.

A similar objection may be raised concerning the wage figures that have been used here for purposes of comparison with the cost-of-living figures. It is true that very little is obtainable in the form of annual earnings; and that, after all, is what is required for an exact comparison. Most of the wage data presented have not been exactly comparable with the cost-of-living figures. It is believed, however, that they have been presented with sufficient caution to justify their use, a belief that is strengthened by the wideness of the discrepancy shown in practically every case between the estimated income and the estimated cost of living. The conclusion seems inescapable that the majority of the wage-earners of the country during most of the time for which figures of wages and living costs are available have received an income that was insufficient for the maintenance of a proper standard of living.

Doubts are frequently expressed about statements like this. In the main, as one sees workingmen on the streets or at their work, they appear to be vigorous and healthy, and there are practically no recorded cases of death by starvation. How, then, can it be said that they do not receive a decent income? Several points must be taken into account in considering a criticism of this sort. In the first place, the claim that any particular group of wage-earners is not getting a living wage is not the same as the statement that they are not receiving the commodities necessary for existence. Somehow or other, through the greater part of the normal span of life, people do manage to secure the absolute essentials to existence; but it does not follow that all are secured through the

medium of the pay envelope. The relief societies in practically every industrial center of the country are faced from time to time with the question of whether they are justified in supplementing wages in order to prevent a family from falling below the margin of health and decency. Where the decision is in the affirmative, the necessities of life are paid for in part by charity.

In the second place, it is not at all certain that there is no starvation, even when people are not dying for lack of food. The breakdown of physical tissue is a slow process, and not a thing that can be observed by the naked eye. When that process is going on, however, the individual is susceptible to disease. Vital statistics record the diseases which cause death rather than the malnutrition which may have made them possible.

But there are some positive rather than conjectural facts regarding the effect of a low income in breaking down human resistance and the ability to live adequately. These facts tend to show that when there is not an adequate income people do not have an adequate living. For example, Dr. Louis I. Harris, of the New York City Department of Health, in December, 1917, and January and February, 1918, made a study of 2,084 families which were under observation by the Bureau of Preventable Diseases of the Department of Health. There were 10,603 persons in these families, of whom 3,169 were wage-earners. Twenty-one per cent of the families had a total income of $600 per year or less; 30.5 per cent had an annual income of from $600 to $900, and about 21 per cent received from $900 to $1,200 per annum. Half of the families, therefore, had an income of less than $900 per year, and 72 per cent an income not exceeding $1,200.

The cases of illness in these families averaged one case

to a family. As a result of these illnesses 9 per cent of the families for the first time applied for charitable relief; in 9.8 per cent of the homes the housewife entered industry during this period to add to the family income; 374, or 17.8 per cent, of the families got into debt; 120 families, or 5.7 per cent, took in boarders for the first time. Most important of all, however, was the effect of illness plus low income on the dietary habits of the families, and upon the rate of recovery from the illnesses.

In 807 families, or 37 per cent of the whole, meat was eliminated altogether; in 388 families, or 17 per cent, the amount of meat was appreciably reduced; 828 families eliminated eggs; 615 families stopped the use of butter altogether; the use of sugar was abandoned in 143 families, and considerably decreased in 240 families. In 293 families the use of bottled milk for infants was given up, in practically all cases loose milk dipped from the can being substituted; but "in 296 other families milk was entirely eliminated from the children's dietary, and in 71 families the amount used for children was very considerably reduced." In 13 per cent of the cases of illness recovery was definitely retarded because of the low standard of living.[1]

The studies of the U. S. Children's Bureau, now widely known, show that the infant death rate varies according to the income of the father. The last study published, containing data secured in Baltimore in 1915, shows an infant death rate of 156.7 per 1,000 births, where the income of the father was $450 or less, the rate falling steadily as the income rose, until with an income of

[1] "Some Medical Aspects of the High Cost of Living," Louis I. Harris, M.D., Department of Health of the City of New York. Reprint series No. 80, May, 1919.

$1,850 or over the mortality rate was 37.1 per thousand.[1] In commenting on these figures Professor Ogburn suggested that "we might call certain low earnings a dying wage instead of a living wage." [2]

In the third place, it should be noted that in many cases other members of the family are employed in addition to the husband and father. The family income, therefore, may be up to par even if the income of the adult male wage-earner is insufficient for a family. It must be recognized, however, that where this is the case it frequently happens at the expense of the well-being of the home, because the housekeeper abandons it to take a job; it may also be at the expense of the children, either because of the absence of the mother during a period when they are greatly in need of her care, or because the children themselves turn wage-earners and thus are denied the opportunities, both cultural and economic, which are enjoyed by those children where the family income is sufficient to enable them to remain in school during their formative period.

It should be remembered, that if the income of the chief wage-earner of the family is not sufficient to provide an adequate living for a family, that fact is not mitigated by reason of the help that he succeeds in getting from these other sources.

REASONS FOR LOW INCOME

There remain to be considered some reasons for the apparent inadequacy of the wage-earner's income. Competition between workers for positions is a factor. Every

[1] Children's Bureau, Publication No. 119, p. 178.

[2] *American Economic Review*, Supplement, March, 1923, p. 127.

period of unemployment, increasing as it does the supply of labor in relation to demand, affords an opportunity for bringing down the scale of wages, and this is just as true in industries which are really prosperous as it is in the case of industries which are on the verge of bankruptcy. Since unemployment, to some extent, is always present, it follows that it is a permanent factor in weakening the bargaining power of labor.

But the primary cause of the inadequacy of the wage-earner's income is probably inefficiency—not one form of inefficiency alone, but an all-pervading inefficiency which is more or less characteristic of our entire social and industrial machinery. Perhaps nothing is more strikingly incompetent than the means by which goods are made accessible to the ultimate consumer. The wastes and pyramiding of costs as goods proceed on their way from farm or factory to the corner grocery or department store are notorious.

Even more pertinent to a discussion of the wage-earner's problems is the inefficiency that is characteristic of management and labor. Labor's inefficiency is perhaps the more obvious, but it is coming to be recognized that incompetency of management has as much to do with economic loss as any other factor in the situation. Indeed, the Federated American Engineering Societies in their study of waste placed the responsibility for more than half of it at the door of management.[1] No matter how competent and hard-working the employee may be, he cannot make the industry succeed if there is incompetency in the executive offices.

[1] "Waste in Industry," by the Committee on Elimination of Waste in Industry, of the Federated American Engineering Societies, p. 9.

Perhaps one of the most striking examples of inefficiency and waste on a national scale, carrying in its wake disaster and loss to hundreds of thousands, is in the bituminous coal industry. Without anyone in particular being to blame for it—and due, in part, to the competitive character of the industry—we have a great, cumbersome machinery with a capacity for producing 800,000,000 tons of coal annually, in the face of a maximum demand for 500,000,000 tons. This seems an enormous waste both in overhead, through the maintenance of organizations that are operating unnecessary and uneconomic units, and in the diversion from other industries to the coal industry of thousands of men in excess of the number needed throughout the year. The result is unemployment, inadequate income, and high prices for coal.

Labor's inefficiency consists in incompetency, indifference, and restriction of output. Labor's incompetency, where it exists, may be due in part to too early an entrance into industry, leaving no opportunity for adequate training. But indifference and positive withholding of efficiency require another explanation. This is too large a subject for adequate discussion in this chapter. It may be said here, however—in the briefest sort of compass—that three things, at least, have a bearing upon the situation. It is hard to work with energy and efficiency at a job in which one is not interested, and it must be recognized that the tendency of modern industry is to rob industrial work of its meaning and educational value. The subdivision of labor, the decline of craftsmanship, have their bearing upon the amount of good will and interest that a laborer is able to put into his job.

In the second place, the average wage-earner does not

believe that it is necessary to produce more goods. He believes that enough work is done already to provide adequately for the needs of the entire population, if goods were properly distributed. The average wage-earner believes his employer's profits are greater than they really are. As a rule he has no opportunity to see the books, and consequently makes guesses based upon the apparent standard of living of his employer, which is obviously far removed from anything that is possible for himself. Furthermore, he catches occasional glimpses of rich idlers. The fact that there are not really a great many of them—in America, at least—has very little effect in mitigating the impression that is made by their presence. Observation of a single wealthy idler makes as profound an impression upon the wage-earner's mind as is made in other quarters by the observation of a single laborer wearing a silk shirt.

In the third place, the wage-earner hesitates about putting forward his best efforts because he does not believe that it would be economically profitable for him to do so. He does not believe that if he did work harder he would share in the increased prosperity that would result from his efforts. Behind this belief there is bitter experience with the cutting of the piece rate, which has so embedded itself in working-class tradition that its influence will doubtless continue for a long time to be effective even if rate cutting should become universally a thing of the past, as it has already in certain establishments.

There is another factor that has a bearing on the wage-earner's point of view regarding production, which will be discussed further in a later chapter.[1] This is the fact that the wage-earner occupies a position so remote from

[1] Chap. xx, "The Wage Earner's Rights."

management that it is practically impossible for him to develop any sense of responsibility for the success of the industry as a whole. Not only that, but it is difficult for him to experience a great amount of interest in an enterprise which definitely excludes him from a share in the making of any decisions concerning it, however simple and insignificant. Where wage-earners have been taken into the confidence of the management, and where definite information is available as to the problems of manufacture and distribution and of income as well, the average wage-earner is apt to respond. It is doubtful whether there can be any reasonable expectation of any considerable increase of labor efficiency until the workers are brought into some such relationship to management.

READING REFERENCES

ANNALS, American Academy of Political and Social Science, March, 1922.

BYINGTON, MARGARET: *Homestead, The Households of a Mill Town.*

CHAPIN, ROBERT C.: *The Standard of Living in New York City.*

CHENERY, WM. L.: *Industry and Human Welfare,* chap. iv.

DOUGLAS, HITCHCOCK AND ATKINS: *The Worker in Modern Economic Society,* part iii.

FEDERATED ENGINEERING SOCIETIES—*Waste in Industry.*

HAMILTON AND MAY: *The Control of Wages.*

KING, W. I.: *Wealth and Income of the People of the United States.*

LAUCK AND SYDENSTRICKER: *Conditions of Labor in American Industries,* chaps. ii, vi, ix.

MORE, LOUISE BOLAND: *Wage-earners' Budgets.*

NATIONAL BUREAU OF ECONOMIC RESEARCH—*Income in the United States.*

NEARING, SCOTT: *Income.*

——— *Financing the Wage-earner's Family.*

RYAN, JOHN A.: *A Living Wage.*

STREIGHTOFF, F. H.: *The Standard of Living Among the Industrial People of America.*

CHAPTER V

UNEMPLOYMENT

THERE is a widespread belief that unemployment occurs only at irregular intervals during a general industrial depression such as that of 1907-08 or that of 1921. It is the general belief that between these periods of depression there is no unemployment problem. Like so many general impressions, however, evidence to support it is conspicuously lacking. Beveridge in his study of unemployment in Great Britain found that at the very minimum 2.2 per cent of members of trade-unions were out of work. Unemployment statistics published by the New York State Department of Labor, based on reports from trade-union secretaries, show that in the period 1904 to 1915—the period during which such figures were compiled—unemployment among trade-unionists in New York due to lack of work fluctuated, but never disappeared. The lowest point reached was in June, 1906, with 3.2 per cent, of the trade-union membership reporting, out of work. The highest was in December, 1913, with 38.8 per cent idle. The yearly average for the eleven full years for which figures are presented ranged from 6.8 per cent in 1906 to 28 per cent in 1908, and the general average for the whole period was 16.3 per cent.[1] Similar figures for Massachusetts, for the period 1908 to 1921, in-

[1] N. Y. Department of Labor, Bulletin No. 69, March, 1915, p. 6; Bulletin No. 73, August, 1915, p. 2. See also Special Bulletin No. 85, July, 1917.

clusive, show an average of 8.8 per cent unemployment among members of trade-unions due to lack of work. The extremes are 1 per cent in June, 1918, and 28.7 per cent in December, 1920.[1]

Ernest S. Bradford, vice-president of the American Statistical Association, estimates that "an average of at least a million and a half industrial wage-earners in the United States are constantly unemployed, taking poor and prosperous years together." [2]

It is generally believed that there was no unemployment in the year 1917-18. This was the period in which the United States engaged in the World War. Industry was being operated at capacity, and any man who wanted to apparently could get a job. It is certainly true that in many enterprises the job was seeking the man rather than otherwise. Nevertheless, the report by the Committee on Waste, of the Federated Engineering Societies, states that a million men were out of work in 1917-18.

CAUSES OF UNEMPLOYMENT

When we consider the causes of unemployment, it becomes evident that under present conditions a certain amount of it is unavoidable. One of the most important causes is the presence in industry of the so-called seasonal trades. One group of trades is seasonal on account of dependence on nature. The canning of fruit and vegeta-

[1] Annual Report, Statistics of Labor, Massachusetts, November, 1921, part 3, p. 35; *Massachusetts Industrial Review*, October, 1922, p. 21.

[2] U. S. Bureau of Labor Statistics, Bulletin 310, p. 2. This does not mean that the same people are constantly unemployed, but refers to the shifting that is constantly taking place producing unemployment for varying periods, now in one industry and now in another.

bles has to be carried on just at the time that these products are ripening. Natural ice can be cut only in cold weather. In many parts of the country logging operations are carried on only when there is snow on the ground to facilitate the moving of the logs. Industries dependent upon water supply either for power or for use in manufacturing are affected by the degree of rainfall and whether the streams are high or low.

Another important group of industries are seasonal on account of demand. Clothing manufacture is generally carried on actively in two distinct seasons each year. The buying public is in the habit of stocking up with summer goods in the spring. Winter goods they buy in the fall. To a certain extent purchases are spread over the entire year, but the vast bulk of buying is done in a few months. Consequently retailers and jobbers place their orders to correspond to these seasons, and the manufacturer is expected to make deliveries just in time. They are thus prevented from spreading their deliveries, and hence their manufacturing, evenly over the year. This naturally throws thousands of workers periodically out of employment, and it greatly increases the cost of clothing because the expense of maintaining idle factories during the dull season of the year has to be borne by the product of the busy season.

A certain amount of unemployment is due to the industrial changes which are taking place all the time. Industry is not static; it is in a state of flux. The invention of labor-saving devices throws groups of men here and there out of work. In the long run they will be reabsorbed into industry, but during the period of readjustment they are unemployed, and suffer all the inconvenience that goes with that condition. Changes take

place, also, because of a shifting of the market. Goods popular in one part of the country cease to be called for and become popular elsewhere. Raw materials at one point are exhausted and new sources are developed somewhere else. When the business of manufacture is shifted from one point to another, the wage-earner and his family are not so sure to be shifted with it. It is more difficult to move a family than it is to move machinery. Some of the workers may follow the industry to the new center, but many of them will not, and again there is unemployment.

Periodic depressions due to the business cycle have already been mentioned as a cause of unemployment. The tie-up in industry which these constantly recurring situations entail means throwing men out of employment by the million.

Political change as a cause of unemployment has possibly not received the attention that its importance would justify. The whole world has had recent and convincing evidence of the effect of war in causing unemployment. Not only is there apt to be temporary stagnation in those countries directly concerned with the war, but neutrals, too, are apt to have their industries thrown decidedly out of gear. The cutting off either of markets for finished goods or sources of raw materials is bound to reflect itself in the life of any country. The effect of the Civil War in cutting off shipments of cotton from the Southern states to England caused unemployment and great privation among the workers in the Lancashire cotton mills.

A protective tariff also may be responsible for unemployment in the countries affected by it. For example, when the McKinley Tariff Act in the 'nineties made the

importation of tin plate into the United States impossible, the tin-plate industry of Wales was seriously affected and men were thrown out of work by the thousands. Eventually this unemployment was taken care of by the wholesale migration of Welsh tin-plate workers to the United States, where they obtained employment in the newly established tinplate industry.

Finally, there is the difficulty under any circumstances of bringing together the man and the job. Under the best of conditions it is difficult for a man in one locality to know of opportunities that may exist in another. So little information bearing upon the question of demand and supply in the labor market has in the past been available that even in the same factory it has been possible for men to be discharged from one department while another department was advertising for men of the same kind of skill. If this can take place within an industry, how much more difficult is it to relate the available supply of labor in a whole country to the available supply of jobs. The public agencies that have so far been set up for the purpose of assisting would-be employers and would-be wage-earners to find each other are so inadequate that the field can hardly be said as yet to have been scratched.

Of these causes of unemployment—the seasonal trades, industrial changes, business cycles, political movements, absence of machinery for bringing men and job together —it is evident that some of them are relatively permanent. Certain small beginnings have been made in the way of meeting the evil of seasonal industries; nevertheless, for the present, we may regard them as permanent phenomena. Industrial changes are always taking place. It would be impossible to imagine a society in which this

would not be true, and the difficulty of bringing together the man and the job is so great that we may not expect this problem to be solved in its entirety, no matter how elaborate the machinery which may be set up. Here, then, are at least three reasons why unemployment may be considered a permanent thing. It is not the occasional recurring plague that many people suppose it to be, but exists now in this industry and now in that; now with one group of workers, now with another; and at times when the surface appearances would lead one to believe that there is prosperity and activity everywhere.

AMOUNT OF UNEMPLOYMENT

Few statistics are available in this country as to the amount of unemployment at any given time. Every census year information is gathered on this subject, but only once have the figures been compiled. In the census of 1900 representing conditions in a normal industrial year, it was stated that one-fifth of all persons in gainful occupations were idle for a period of from one to twelve months. The United States Commission on Industrial Relations stated that wage-earners in general, in mining and manufacturing, regularly lose from one-fifth to one-quarter of their working time. It has been estimated by other competent authorities that wage-earners in the principal manufacturing and mining industries lose on the average from one-fifth to one-third of the full working time during the year.[1] The most recent statement from a governmental source is that about 10 per cent of full working time, exclusive of idleness due to sickness or strikes, is lost each year by industrial wage-earners.[2]

[1] Warren and Sydenstricker, United States Health Bulletin No. 76.

[2] U. S. Bureau of Labor Statistics, Bulletin No. 310, p. 2.

Few industries are more irregular in operation than the mining of bituminous coal. Reports of the U. S. Geological Survey show that during the thirty-two years ending in 1921 there has been an average of only 214 working days each year in this industry. At the peak of demand in the war year of 1918, the average for the soft-coal mines of the country was 249 working-days. This was the high point of the thirty-two years for which statistics are available. The greatest unemployment came in 1920, with only 170 working-days.[1] When the bituminous coal miners struck in 1919, asking for a six-hour day, it was shown that if an opportunity were given them to work six hours every working-day in the year, they would do more work in the year than they had been able to do under eight hours.

With all the uncertainty and wretchedness that unemployment is apt to entail in the wage-earner's life, these evils are intensified by certain other attendant circumstances which should be considered here. A most direct contribution is made by the inadequate machinery in existence for finding jobs even when jobs are available. In the absence of a government system of employment offices, the unemployed man must have recourse to the private employment agency or to the want "ad" in the paper, and these means of obtaining information have difficulties all their own.

Not the least of the iniquities that have grown up about the modern industrial system is the private employment office conducted for profit. Many of these agencies are operated by honest men and women who desire to furnish, and do furnish, a necessary service to the community. There are possibilities, however, of corruption and graft

[1] *Survey Graphic*, April, 1922, p. 1009.

in these agencies, and when a crook gets control of one, the service he renders may be anything but desirable for the community as a whole. It is well known that some of these agencies are in the habit of conniving with foremen to cause the discharge of workmen from time to time so that other workmen may be employed through the agency. The fees paid by the new men are divided with the dishonest foreman. Sometimes this is carried on on such a scale that week by week new men are constantly being sent in and old men being sent out, with the result that the employment agent and the foremen reap a continuous income.

Many private agencies pay little attention to the service actually to be rendered, but content themselves with sending men out to prospective jobs without ascertaining whether or not the opening has been filled; first, however, collecting their fee. An example of this sort of thing was given at a public hearing by a woman at the head of a private agency of the better type in New York City. She stated that on one occasion a telephone call from a construction job near Albany informed her that twenty-five men were wanted the next day. She was about to make an effort to fill the order when it came to her attention that five other agencies had also received an order for twenty-five men. She telephoned to inquire whether twenty-five men or one hundred and fifty were wanted. She was told that the number was twenty-five. Accordingly, she made no effort to fill the order. The other agencies, however, sent twenty-five men each from New York to Albany, a distance of nearly one hundred and fifty miles, to a place where there were twenty-five jobs available. The men who were not taken on had no recourse but to find other employment, if there were

any in the vicinity, or beat their way back again to New York.[1]

This illustration shows how the carelessness of employers may intensify the evils of unemployment. Not only are orders sometimes placed with agencies for many more men than the employing concern can possibly use, but advertisements are placed in the papers for the purpose of attracting to the gates of the factory large numbers of men in order that there may be as large a basis for selection as possible. This is of course desirable from the standpoint of the employer, but it means that many men will travel long distances and subject themselves to great inconvenience and vexation for no other purpose than to give the employer a larger basis for selection.

PREVAILING MISCONCEPTIONS

The ordinary evils of unemployment are intensified further by certain prevalent misconceptions. A bit of comment which everyone has heard and which seems to have as wide currency during times of industrial depression as at normal times is that "any man who wants to work can get a job." Comfortable middle-class people, particularly "self-made" men who have themselves overcome difficulties and won out in the struggle, find it very difficult to believe that anyone can be unsuccessful who is really thrifty and energetic. How untrue this statement is as a general comment on the unemployment situation a moment of reflection must reveal. During a considerable part of the summer and fall of 1921 the steel mills of the United States were operating at about 25 per

[1] U. S. Commission on Industrial Relations, Final Report and Testimony, vol. ii, p. 1255.

cent capacity. In other industries factories were running part time or were idle altogether. How absurd it would have been to say that every steel worker who wanted to work could get a job. Obviously, only one in four could get a job in the steel industry. If all other industries had been enjoying a season of prosperity, some of the remaining 75 per cent could undoubtedly have been absorbed. But not all of them could, because they would not be adapted to the requirements of other industries; they would not have the experience or the requisite skill. Under the circumstances that existed, with unemployment rife in the other industries also, the fact that steel workers, however desirous of work, could not obtain it must be evident.

One does not need to consider a period of general depression, however, to recognize the inaccuracy of the traditional belief that any man can get a job. There is unemployment in the garment trades every year. It is absurd to suppose that every garment worker could fill in his idle weeks by working in another industry. What he could do would depend altogether upon the opportunities at the time. Many garment workers are men of light physique, who would not last a day at a heavy laboring job.

The continuance of the belief that finding a job is at any time merely a matter of initiative and determination is, of course, a serious handicap to the unemployed man and tends to postpone the adoption of intelligent measures designed to mitigate or do away with the evils of unemployment.

Another belief that is fairly prevalent is that the unemployed are mentally unfit. This is very nearly as untrue a statement as the other. It is obviously without justifica-

tion when unemployment is due to seasonal fluctuations or to industrial depressions. At such times, within given areas, the whole body of workers is unemployed, regardless of either their mental or their physical characteristics.[1] But even in normal times the statement is valid only to a limited extent, if at all. Whenever it becomes necessary to reduce the working force, the employer will, of course, select for dismissal first of all those who are for any reason the least desirable. What constitutes desirability or undesirability depends, however, upon the conditions prevailing at any given time. The necessity of shutting down one department in a factory, while other departments continue to run, might make men of high intelligence and skill in the one department less desirable for a time than less competent men in other departments.

Other things being equal, the most incompetent men will be laid off first. It should be noted, however, that this is not a cause of unemployment. The degree of competency in any such case as this may determine who the particular individuals are to be who are to lose their jobs. They are losing their jobs not on account of incompetence, however, but on account of lack of work. Whatever it was that led to the curtailing of the output of the factory is the thing that caused the unemployment. It would not have been averted if all of the employees had been of equal ability and competency.

FEAR OF THE UNEMPLOYED

Another prevailing misconception about the unemployed is that they are to be feared. In many parts of the country

[1] Stuart A. Rice, "The Effect of Unemployment upon the Worker and His Family," chap. vii in *Business Cycles and Unemployment.*

men who are looking for work and who are insufficiently supplied with money are treated as vagrants. Many a man who has never seen the inside of a jail before has been arrested and held as a suspicious character for no other reason than that he was poor and out of work and hunting for it in a part of the country with which he was unacquainted.[1]

In Portland, Oregon, in 1914, some unemployed men were offered an opportunity to clear some land, but the owner withdrew his offer when neighbors protested against his introducing "vagrants" into their community. These men were thus cut off from an opportunity of earning their own living by honest work.[2] In New York City in the fall of 1921 a "Committee on Homeless Men and Youths," representing certain social agencies in the city, wrote to the Mayor's Committee on Unemployment, urging that the armories should not be thrown open to homeless men as sleeping places. "While an uprising of the unemployed is unlikely," a representative of the committee said, "clever agitators might get busy among the men." The armories "with their supplies of ammunition and large number of guns and rifles would furnish a formidable hostile body with power of no small proportions." [3] Under the spell of this fear, gatherings of unemployed may be attacked by the police, as in Los Angeles a few years ago, when a meeting on Christmas Day was broken up with water from a fire hose, or as in New York in 1921, when unemployed men who had gathered on an invitation to a distribution of food were clubbed and not permitted to receive the food.

[1] See testimony of George L. Bell before U. S. Commission on Industrial Relations, vol. v, pp. 4979-4982, 4992-4994.

[2] U. S. Commission on Industrial Relations, vol. v, p. 4723.

[3] N. Y. *Tribune*, September 28, 1921.

It is probable that this fear of the unemployed is far more general than appears on the surface. No one is afraid of one or even three or four unemployed men; indeed, the average citizen going about a city attending to his personal affairs is unaware of the presence in the street of men who are out of work. He cannot tell by looking at them whether they are unemployed or not. But if the rumor begins to spread about that the city is crowded with men who are out of work; if it is learned that the municipal lodging house is full and running over; if meetings of unemployed men begin to be held, to be addressed by agitators or even simply by some of their own number desirous of taking counsel as to what may be done—then little tremors of fear begin to manifest themselves. The police become more vigilant; street-corner meetings are frowned upon; and in every way possible the city authorities, backed by public opinion, bring it about that the presence of men out of work shall be kept in the background.

Unemployment has consequences more serious than the temporary cutting off of income. Its consequences are to be measured not only in terms of the inconvenience of the moment, but in terms of after-effects over a period of time. Particularly is this true where unemployment is a recurring thing. It was estimated by a competent observer that of the 200,000 men who were supposed to be out of work in New York in 1914, 100,000 were unemployable. That is, they had suffered the recurring shock of unemployment until either their physical resistance or their morale had broken down and they were no longer capable of taking their places as economic units in the industrial world. The strain of long-continued or frequently recurring unemployment is reflected in the

mental condition. Disappointment is followed by disillusionment; a sense of failure develops into loss of self-respect.

REMEDIES FOR UNEMPLOYMENT

This is not the place for an extended discussion of remedies, but it is impossible to dismiss the subject without a reference, at least, to some of the main proposals. They group themselves under three heads. The first is employment. That seems obvious. The thing an unemployed man needs most of all is a job. Employment is also what industry needs most; consequently the industrial engineers who understand something of the cost of idleness are endeavoring to regularize manufacturing operations and to spread the work over a whole year. By better planning, using scientific methods of forecasting business prospects, by developing a more intelligent sales policy that relates its activities to capacity of plant and working force, some remarkable results are being achieved in some industries that had been considered hopelessly seasonal.[1]

As a part of the plan to cure unemployment by providing work, it is frequently proposed that the various

[1] A few of the outstanding discussions of this subject are the following:

N. I. Stone, "Continuity of Production in the Clothing Industry," *American Labor Legislation Review,* March, 1921, p. 29.

"The Dennison Manufacturing Co. Plan for Combating Unemployment," *American Labor Legislation Review,* March, 1921, pp. 53-55.

H. Feldman, "New Emphasis in the Problem of Reducing Unemployment," Bulletin of the Taylor Society, vol. vii, no. 5, October, 1922, pp. 176-182.

Business Cycles and Unemployment, chaps. ix, x, xii, and xiii.

units of government should so plan their public work as to utilize the largest number of men possible when other work is scarce, thus providing a reservoir of unemployment in bad times. If a skeleton public-works organization were constantly maintained, which could expand and contract inversely to the expansion and contraction of ordinary industrial employment, both public and private interests, it is contended, would be admirably served. The necessary reserve army of labor would not be wiped out by this process, but by means of it a large part of the reserve would be able to maintain itself in health and comfort until again needed to promote the needs of private industry.[1]

The second proposal for dealing with unemployment involves the setting up of agencies for assisting the unemployed man to find a job, and the employer to find the right kind of labor. This is so large a project that few believe that it can be managed efficiently by any lesser agency than the state. The leading industrial states have established public employment agencies of varying degrees of efficiency, but an authority of broader scope than the individual states is needed. There is as much need of interstate mobility of labor as there is of interstate freedom of trade. Accordingly, there should be a federal employment service extending to every part of the country and constituting a vast clearing house of information on the state of the labor market.[2]

[1] a. See *American Labor Legislation Review*, March, 1921, article by Otto T. Mallery; June 1921, articles by Edwin F. Gay, John B. Andrews, Frederick W. McKenzie, and Morris L. Cooke.

b. *Business Cycles and Unemployment*, chap. xiv, "The Long-range Planning of Public Works," by Otto T. Mallery.

[2] *Business Cycles and Unemployment*, chap. xvi, "Public Employment Offices and Unemployment," by Shelby M. Harrison.

The third general proposal for dealing with unemployment, if it is accepted, requires an altogether new conception of unemployment. Who are the unemployed? Men out of work and cut off from income, of course. But we are all familiar with men who are out of work whose incomes are not thereby cut off. This is true not alone of those who have incomes from investments; men on salary, if they are important enough, are generally kept on the payroll during periods of depression when their duties are light or insignificant. The same is sometimes, though less frequently, true of exceptionally valuable and highly paid wage-earners. Often such a man, compelled to give up work temporarily on account of illness or accident, is kept on the payroll. We are familiar, furthermore, with types of employment where a man regularly draws his pay, though he does no work. A city fireman, for example, is paid whether there are fires to put out or not. No one complains at his receiving an income while sitting around waiting for the fire whistle to blow. The pay of policemen is not reduced or cut off during periods when they are not directing traffic or making arrests.

The unemployed at any given time constitute an essential industrial reserve. Without this surplus there would be no room for expansion or fluctuation in industry. It is everywhere assumed that there should be such a reserve. A man starting a new factory does not expect to wait for a shipload of immigrants to make up his labor force, nor for babies just born to grow to manhood before he can start his machinery. He takes it for granted that somewhere idle men are to be found who will come and make possible the operation of his industry. Chambers of Commerce attempting to build up their town by getting

new factories established in it are in the habit of advertising that there is a plentiful supply of labor available. This means, of course, that there are idle men in the community. Such a condition is looked upon by the agent of the Chamber of Commerce as a necessary and desirable thing. It is a talking point which enables him to convince the prospective *entrepreneur* that his town is a better one than some other in which to locate.

Because it is beginning to be recognized that an essential worker is an asset upon which the industry depends, it is now being seriously proposed that industry has some responsibility for his maintenance. This proposal has taken concrete form in various plans of insurance against unemployment. None of these plans are based upon the theory that the industry "owes" a living to everyone in it, but they do imply an obligation on the part of the industry to the worker temporarily released from active service. John Calder, an industrial engineer and plant manager, says in a recent book: ". . . The first thing to note and reckon with is that each industry *needs a surplus of labor*. Capitalism is well aware of this and it should face the consequences. The second is that the surplus, for the social good, should be kept as small as possible. The third is that the necessary surplus of labor in any industry *should be carried at the expense of the industry.*"[1]

In this country there are several voluntary plans under which the employer sets aside a fund out of earnings from which unemployment benefits are paid.[2] There are at

[1] *Capital's Duty to the Wage Earner*, p. 235. (Italics as in original.)

[2] a. H. A. Hatch, "An American Employer's Experience with Unemployment Insurance," *American Labor Legislation Review*, March, 1921, p. 41.

least two plans worked out by agreement between employers and a union, one in Cleveland, in the ladies' garment industry,[1] the other in the men's clothing industry of Chicago. There are also some proposals for compulsory unemployment insurance under the supervision of the state; a bill has been before the last two sessions of the legislature of the state of Wisconsin, failing of passage both times, which provided for a tax on the industries of the state for the establishment of an unemployment fund. Out of this fund it is proposed that men who are unemployed through no fault of their own shall be paid one dollar a day for a period of thirteen weeks.

READING REFERENCES

BEVERIDGE, W. H.:—*Unemployment, A Problem of Industry.*

Business Cycles and Unemployment—Report and Recommendations of a Committee of the President's Conference on Unemployment, 1923.

CHENERY, WM. L.: *Industry and Human Welfare,* chap. vi.

COMMONS, JOHN R.: *Trade Unionism and Labor Probems,* part. ii.

COMMONS AND ANDREWS: *Principles of Labor Legislation,* chap. vi.

GANTT, H. L.: *Organizing for Work.*

HARRISON, SHELBY M.: *Public Employment Offices—Their Purpose, Structure and Methods.*

HOBSON, J. A.: *The Problem of the Unemployed.*

JOHNSON, JULIA E.: *Unemployment—in Debaters' Handbook Series.*

b. "Dennison Manufacturing Company Plan," *American Labor Legislation Review,* March, 1921, pp. 55-58.

c. *Business Cycles and Unemployment,* pp. 336-339.

[1] W. J. Mack, "Safeguarding Employment," *American Labor Legislation Review,* March, 1922, p. 25.

KLEIN, PHILIP: *The Burden of Unemployment.*

LAUCK AND SYDENSTRICKER: *Conditions of Labor in American Industry,* chaps. iii and iv.

LESCOHIER, DON D.: *The Labor Market.*

MILLS, F. C.: *Contemporary Theories of Unemployment and Unemployment Relief,* in Columbia Studies in Economics and Public Law, vol. lxxix, 1917, no. 1.

ROWNTREE AND LASKER: *Unemployment, A Social Study.*

U.S. Commission on Industrial Relations, vol. i, pp. 35-38, *Unemployment and Denial of Opportunity to Earn a Living;* also pp. 103-115.

PART II

UNREST ARISING FROM THE STRUGGLE

INTRODUCTORY STATEMENT

IN the preceding chapters industrial unrest has been spoken of as arising out of unsatisfactory economic conditions. In this section it is proposed to show that unrest grows by what it feeds upon, that it has an aspect which is due not directly to the presence or absence of any particular set of economic conditions, but which grows out of the very struggle itself. Any struggle tends to develop antagonism. In the give and take of life blows are struck which themselves lead to other blows. The same thing is true in the labor movement.

But the unrest arising from the struggle between capital and labor has a quality all its own, because the question of fair play is distinctly an issue. When an employer expresses his opposition to unions by planning and attempting their destruction, the wage-earner feels that he has gone beyond the limits of a fair fight and his resentment is keen. President Harding discovered this aspect of unrest when dealing with the coal and railway strikes in the summer of 1922. In the course of an address before the members of Congress he said:

In the weeks of patient conference and attempts at settlement I have come to appraise another element in the engrossing industrial dispute of which it is only fair to take cognizance. It is in some degree responsible for the strikes, and has hindered attempts at adjustment. I refer to the warfare on the unions of labor. The government has no sympathy

or approval for this element of discord in the ranks of industry.[1]

In addition to the resentment arising out of the attempt to destroy their unions, wage-earners experience an added sense of wrong whenever they encounter methods of opposition which they consider unfair. Struggle itself is a natural and not undesirable phase of human life, but wherever human desires are thwarted, wherever obstacles are placed in the way of what people believe to be their rights, then bitterness creeps in of a sort which is not to be encountered elsewhere. Exploitation and unemployment may, and often do, lead to discomfort and misery, but there is no antagonism or bitterness of feeling arising out of these conditions in themselves which is comparable to that which flows from the tactics sometimes developed in the labor struggle which are intended to deprive the workers of what they believe to be their essential rights, or which invade or violate their sense of personal worth and dignity.

In the succeeding chapters of this section the struggle will be discussed in such a way as to show how bitterness of the kind which is here suggested has been developed.

[1] Address to Congress, August 18, 1922. *Congressional Record*, vol. lxii, August 18, 1922, pp. 12578-12581.

CHAPTER VI

THE LABOR MOVEMENT

THROUGHOUT all history there has been a forward movement of the dispossessed, the disfranchised, the non-privileged classes as against the possessors of property and privilege. This movement has been both political and industrial. Politically it led to the rise of the barons in England, and the consequent lessening of the power of kings, the signing of Magna Carta, the rise of the parliamentary system, the extension of the franchise, the movement for universal suffrage. On the industrial side it has meant a constant struggle for an extension of rights. Both movements represent a succession of steps in the direction of the removal of barriers and the equalizing of opportunity.

"Labor movement" is a term that may properly be used to describe the industrial side of this struggle. It is a term that is generally used to describe the organization of labor in unions and the carrying on through the unions of a struggle for better conditions and wider opportunities. This is really only a part of the movement as a whole, for the labor movement in its largest sense is a mass movement involving the whole of the working population and their families, and not merely those who are organized in unions. It is an instinctive movement, and it is a movement for something more than the possession of a larger proportion of the world's goods. Just as the politically disfranchised have pressed forward and secured for them-

selves a share in the control of government, so the industrially disfranchised are moving toward the securing of a share in the control of industry. The movement, therefore, is in its fundamental aspects a demand for a changed status for the people who toil with their hands.

Historically, this is what the laboring masses have always been doing. At the very dawn of history the man who worked for another was a slave. After centuries of protest and occasional revolt, we find him a serf, chained to the land, though not so definitely to the person. Then he appears in a state of quasi-freedom, as in the England of the thirteenth and fourteenth centuries. While theoretically a free man, the worker was under various handicaps and dared not dress like a "gentleman" or engage in "gentlemen's" sports lest he incur the penalties of the law. Even at the beginning of the nineteenth century it was still illegal in England for wage-earners to hold a meeting to consider how to secure an advance in wages.

The twentieth century found the wage-earner in Anglo-Saxon countries enjoying what appears at first glance to be full freedom of the person, but a closer inspection reveals him as so hedged about and bound by his economic status that it is impossible to say that he is wholly free.[1] The task of making him really free, not only in his person, but in his relation to industry, remains to be achieved.

The labor movement, then, is far more than a bread-and-butter movement. It represents something of far greater significance than that, something inevitable, that can no more be halted than the flow of rivers to the sea. This is the more deeply fundamental aspect of the labor movement. In its immediate aspects it deals, of course, with specific questions having primarily to do with eco-

[1] See chap. xx, "The Wage-earner's Rights."

nomic gain or loss. The struggle which this movement implies is, on the one hand, between the employers—that is, the owners of the means of production and their representatives—and on the other hand, the wage-earners. The employer is to a certain extent already equipped for carrying on the struggle by reason of the fact that he is an employer. As compared with any one of his employees, he represents, even if he is a small employer, much greater economic strength. If he is a large employer representing extensive interests, his economic strength is almost infinitely greater than that of the individual employee. Even the smallest employer has an advantage over a single employee in that his bread and butter does not ordinarily depend upon concluding an agreement at once. He may, therefore, within reasonable limitations, abide his time and await a favorable opportunity. To the wage-earner, on the other hand, it is of great importance that the bargain be concluded as soon as possible. He has for sale an absolutely perishable product. He cannot store up labor power. If he does not sell his labor to-day he cannot save it until another day. That day's labor is gone forever. Without very much in the way of accumulated property, he cannot wait long without striking a bargain. He must sell his labor in order to live.

IMPORTANCE OF ORGANIZATION

The most obvious way by which the wage-earner can hope effectively to overcome this handicap is by combining with his fellows and presenting a united front for bargaining purposes. Not only can the wage-earners afford to be a little more deliberate when they have pooled their resources, but they are able thereby to present against the great economic strength of the employer a consider-

able strength of their own. The bargaining power of an individual workman may be so little as to be disregarded utterly by his employer, but the bargaining strength of all of the employees together is a thing to be respected.

Consequently the labor struggle appears in two forms. There is a struggle between the employer and the individual workman over the right of the latter to form an organization. Concerned as he must be with keeping the advantage that he naturally possesses as bargainer, the employer has an obvious interest in preventing the growth of a bargaining strength on the part of the workers that will make less significant his own power as bargainer. The other form of struggle is between the employer and the union over the terms of the labor contract. As a practical matter, of course, these two forms of a struggle frequently merge into each other.

It must be evident that in the carrying on of this struggle some form of organization is, from the wage-earner's standpoint, essential. Organization affords an opportunity for conference and deliberation. If the struggle is to be effective, the first necessity for those who are to engage in it is to find out whether there exists any common sentiment or demand. Prior to any popular action there must be a drawing together and a sharing of opinions. This is what happened prior to the American Revolution, when the leaders of thought in the different Colonies approached those in other Colonies in order to exchange views. "Committees of Correspondence" were formed, which enabled the different Colonies to carry on extensive communications with each other, and thus there was developed that sense of confidence which arises out of the knowledge that there is common feeling. It is because this preliminary getting together is so important

that the labor movement can often be thwarted just at this point by the use of means to prevent the holding of preliminary meetings or the carrying on of organizing campaigns.

Another necessity after the existence of a common feeling has been ascertained is to set limitations to the movement which is to be undertaken, to find out not only what is desired, but exactly and in definite terms what it is that the workers intend at this time to propose.

In the second place, an organization of the workers provides a means for making their demands effective. It is not alone necessary that there should be a common opinion and thus a demand representing the real feeling of the workers. It is essential also that there should be an effective strength back of the demand. This strength, of course, arises out of the power of an organized group to interfere with industry. When the basis is laid for concerted action a strike is possible, and that is the ultimate power behind every demand of a labor organization.[1]

Of less importance, perhaps, so far as carrying on the struggle is concerned, but nevertheless a very distinct ad-

[1] Chief Justice Taft of the U. S. Supreme Court emphasized this point in a recent decision: "Labor unions . . . were organized out of the necessities of the situation. A single employee was helpless in dealing with an employer. He was dependent ordinarily on his daily wage for the maintenance of himself and family. If the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and to resist arbitrary and unfair treatment. Union was essential to give laborers opportunity to deal on equality with their employer. They united to exert influence upon him and to leave him in a body in order by this inconvenience to induce him to make better terms with them. They were withholding their labor of economic value to make him pay what they thought it was worth. The right to combine for such a lawful purpose has in many years not been denied by any court. The strike became a lawful instrument in a lawful eco-

vantage of organization to the workers, is the fact that it affords an opportunity for self-expression, which is sometimes lacking in the daily work as conducted under present-day industrial organization.

TRADE UNION MEMBERSHIP

The growth of labor organizations in the United States and their establishment on a relatively permanent basis have been fairly coincident with the rise of the American Federation of Labor. Beginning in 1881 with a membership of less than fifty thousand, the American Federation of Labor to-day represents a total union membership of more than three millions. The table of membership given below [1] shows that there have been alternating periods of growth and stagnation, with the tendency in the direction of more and more rapid growth. The table shows that

nomic struggle or competition between employer and employees as to the share or division between them of the joint product of labor and capital." American Steel Foundries *vs.* Tri-City Trades Council, 257 U. S. 312.

[1] The following figures are taken from the annual reports of the Secretary of the American Federation of Labor. The figures from 1881 to 1896, inclusive, are approximations. After 1896 they are presumably accurate.

1881.... 48,000	1896.... 260,000	1911....1,761,835
1882.... 60,000	1897.... 264,825	1912....1,770,145
1883.... 75,000	1898.... 278,016	1913....1,996,004
1884....110,000	1899.... 349,422	1914....2,020,671
1885....125,000	1900.... 548,321	1915....1,946,347
1886....135,000	1901.... 787,537	1916....2,072,702
1887....160,000	1902....1,024,399	1917....2,371,434
1888....175,000	1903....1,465,800	1918....2,726,478
1889....210,000	1904....1,676,200	1919....3,260,068
1890....220,000	1905....1,494,300	1920....4,078,740
1891....240,000	1906....1,454,200	1921....3,906,528
1892....260,000	1907....1,538,970	1922....3,195,635
1893....265,000	1908....1,586,885	1923....2,926,468
1894....267,000	1909....1,482,872	
1895....265,000	1910....1,562,112	

it took twenty-one years for the Federation to reach the million mark, nineteen of which were occupied in accumulating the first five hundred thousand. The second million was passed after twelve years more; five years were sufficient to bring in the third million, and one year more brought in a fourth. The period 1916-1920 was the period of greatest growth in the history of the organization, and the actual increase year by year was as follows:

1916—126,355
1917—298,732
1918—355,044
1919—533,590
1920—818,672

During 1921 and 1922 the economic depression and the open shop drive had their effect. There was a loss of over 172,000 in 1921 and in 1922 a further loss of nearly 711,000. In 1923 the downward tendency began to be checked. The figures in October, 1923, showed a decline of 269,000 from the figure of June, 1922, sixteen months before.

The American Federation of Labor does not represent the total strength of organized labor in the United States. The powerful railroad brotherhoods are not affiliated with the Federation, and the Amalgamated Clothing Workers, which represents practically the whole of the men's clothing industry, is not affiliated. There are unions which have been suspended from the Federation, and there are independent unions in addition to those mentioned above, which, altogether, have a large membership.

There is no source, official or otherwise, in the United States, from which accurate figures of total membership can be derived. The Canadian Department of Labor, however, publishes annual statements based on reports as

to their membership from the various international organizations having locals in both the United States and Canada, and fortunately separates the figures for Canada and "Elsewhere." [1] This furnishes a better figure of total union membership in the United States than can be secured in any other way, although it leaves out of account unions which have no members in Canada.

According to the latest report—that of 1922—the total membership of international unions [2] outside of Canada, both inside and outside the American Federation of Labor, was 3,866,095.[3] This included seven organizations not affiliated with the American Federation of Labor.

These unions, with their non-Canadian membership, in 1922 were as follows:

United Cloth Hat and Cap Makers of America	9,445
Amalgamated Clothing Workers of America	165,250
Brotherhood of Locomotive Engineers	78,556
Brotherhood of Locomotive Firemen and Enginemen	99,717
Brotherhood of Railroad Trainmen	155,683
Order of Railway Conductors	54,403
International Brotherhood of Steam Shovel and Dredgemen	10,500
	573,554

[1] "Elsewhere" includes,—besides the United States,—Mexico, Canal Zone, Philippines, Hawaii, and Newfoundland. In these countries membership in the international unions is negligible, so the figures may be accepted as representing the United States. They are so accepted and used by the International Labor Office.

[2] The term "international" is applied to unions having members both in the United States and in Canada.

[3] Twelfth Annual Report on Labor Organizations in Canada, 1922, p. 259.

If the membership of local unions not affiliated with either national or international bodies were added, the total would be well over four million. This is a large number, but it is, after all, a rather small proportion of the total population. Various estimates have been made of the percentage of the gainfully employed who are in trade unions, but these do not give us a clear picture of the extent of organization. The census figures of persons gainfully employed include employers as well as wage-earners, and in addition professional workers and large numbers of others who are not susceptible of union organization. It should be noted, furthermore, that the field in which trade-unions naturally function is not coextensive with all gainful employment. There never has been any trade-union movement of significance in agricultural employment, yet altogether those engaged in agriculture represent more than a fourth of the gainfully employed.

The fields in which the trade-unions naturally function —where the workers are reasonably susceptible of organization—are mining, manufacturing, transportation, construction, and other mechanical trades. The 1920 census indicates that there were about 15,800,000 wage-earners in these industries in 1919.[1] Using the Canadian figures of union membership for that year, it would appear that about 25 per cent of the wage-earners of the United States who belong to the groups capable of being organized are in unions.

[1] The census does not give exact numbers of wage-earners in all of these occupations. An estimate made by Carl Hookstadt for the U. S. Bureau of Labor Statistics, based on census figures, gives for these groups the figure of 15,783,200.—*Monthly Labor Review*, July, 1923, p. 2.

TRADE-UNION STRUCTURE

Structurally the American trade-union movement is made up of local unions, district federations, and national and international organizations. According to the report of the secretary of the American Federation of Labor for 1923, there were in that year 36,534 local unions. The local is the point where the union functions in its relationship with the employer. The individual workman has membership in the local. The larger unit, the national or international, is really a federation of the locals. The local may be said to be both the progenitor and the offspring of the larger unit. That is, union organization in its beginnings is naturally a local affair. The workers in a given trade or given locality get together and form a local trade-union. The same thing happens in the same trade in other localities, and eventually there is a movement for gathering these locals together and developing a coherent movement on a larger scale. In this sense, the local is the parent of the larger movement. When the larger organization has been formed, then organization is stimulated, officers are elected who give their time to the promotion of union organization, and the new locals which are thus fostered in different parts of the country are the offspring of the larger unit.

In addition to the locals which constitute a part of the great national and international unions, there were 523 local trade and federal labor unions in 1923. These are local organizations sometimes having a mixed membership in localities where there are not enough workers in any given trade to make a local of that trade necessary, or they are composed of workers in the same trade where

a national or international union has not yet been formed. These locals are directly affiliated with the American Federation of Labor.

In 1923 there were 108 national and international unions affiliated with the American Federation of Labor. It is primarily through these national and international unions that the American labor movement expresses itself. The individual trade-unionist is a member of some one of these unions. He belongs, for example, to the International Association of Machinists, or to the Molders Union of North America, or to the International Union of Bricklayers and Plasterers of America. The individual does not belong to the American Federation of Labor. The latter has no individual membership whatever. Mr. Gompers is not a member of the American Federation of Labor. He is a member of the Cigar Makers Union, which in turn is affiliated with the American Federation of Labor.

The latter, as the name implies, is a federation of the national and international unions. It has no power over the affiliated bodies except the power of expulsion. This does, of course, enable the Federation to wield a considerable influence because in a measure expulsion means being read out of the labor movement, and that is a serious thing, particularly for a weak union. The Federation, however, attempts to exercise authority over its constituent members only with respect to the relationship of one to another. So far as the Federation is concerned, each affiliated union is supreme in its own field. The doctrine of trade autonomy is a basic one with the American Federation of Labor.

It is important to note that there are federations of less scope than the country as a whole. Nearly every city

has a federation of the local unions existing there. These are known as central bodies. There were 901 of these in 1923. The central body is a delegate body, each local of an organization affiliated with the American Federation of Labor being entitled to representation. In most cities the central body meets every week, and matters of general interest to the labor movement of that vicinity are discussed. The central labor body usually has considerable political influence and represents the local movement before the city council or before the state legislature. It is influential in the labor movement as a whole, and its indorsement of various projects of the different unions is eagerly sought.

In every state there is a federation of the organization in that state known as the State Federation of Labor, which holds an annual convention, and occupies the same relation to the labor movement of the state that the city central does to the local labor movement.

Finally, there are four so-called trade departments. These are federations of international unions in the same field. These are the Building Trades Department, Metal Trades, Railway Trades, and the Label Trades. The last named department exists for the purpose of promoting the use and recognition of the union label.

READING REFERENCES

See end of Chapter VII.

CHAPTER VII

COLLECTIVE BARGAINING

COLLECTIVE bargaining and individual bargaining are terms used to describe the discussion that precedes the making of an agreement concerning the contract of employment. When the discussion is between the employer or his representative and a single wage-earner and is concerned exclusively with that individual wage-earner's contract, the process is said to be individual bargaining. This is the method prevailing in shops where there is no organization of the employees. Collective bargaining exists wherever a group of employees bargain as a unit with the management with a view to the negotiation of an agreement which is to define conditions of employment for all of the workers bargaining or represented in the bargaining.

Collective bargaining may exist, therefore, on a very narrow or a very extensive scale. It may concern a handful of workers in a single department of a shop who may reach an agreement with their foreman, town meeting fashion, or it may involve thousands of men in many shops and spread over a wide geographical area, who through elected spokesmen, meeting with a group similarly representative of employers, may negotiate an agreement for an entire industry. Formal organization is not absolutely essential to collective bargaining, but unless there is organization the bargaining is sure to be of an extremely limited character and to involve agreements of doubtful

permanency. Within a single department of a shop there may be at any given time a certain informal collective bargaining without any organization. But it is organization alone that can make possible the development of collective bargaining over a wide area or insure its stability.

When there is organization the influence of the bargaining engaged in may extend far beyond the limits of the organization itself. Where a plant is only partially organized, the agreement reached in the organized section is bound to have an influence on the individual bargaining of the non-union men in the same establishment. Where an industry is partially unionized, the bargaining carried on will have a strong influence over any non-union collective bargaining such as may exist under a shop-committee plan. It is sometimes provided, for example, in shop-committee agreements, that wages shall be equal to the rates agreed upon with the union in the same industry. The union agreement also may influence the condition of non-union men through the operation of "prevailing rate" laws. Where a state or municipality provides that wages paid to government employees and to the employees of contractors engaged in government work shall be in accordance with the rate prevailing in the community, it is usually assumed that the union rate is the prevailing one.

The importance of the union in collective bargaining cannot, therefore, be overemphasized, as the Webbs point out. "Though collective bargaining prevails over a much larger area than trade-unionism, it is the trade-union alone which can provide the machinery for any but its most casual and limited application." [1] One of the reasons for

[1] Webb, *Industrial Democracy*, 1914 ed., pp. 178-179.

the importance of trade-unionism in collective bargaining is that it is able to provide paid representatives to conduct negotiations with the employer on behalf of the members of the union. Where there is no organization at all, or merely a shop committee, negotiations must be carried on by regular workmen in the plant. Where this is true, there is always a possibility that the case for the workers will not be presented with all the force and aggressiveness that the situation may require. The employees' representative is apt to be conscious of the fact that he is himself an employee of the shop, and therefore subject to discipline and discharge by the very executive to whom he is presenting his case. The union representative, on the other hand, is apt to be a permanent official of the union, an employee of the men for whom he speaks, and not personally dependent on the employer from whom he is endeavoring to secure a concession. He is able, therefore, to speak fully and frankly; without fear of reprisal, if in the heat of argument he should incur the ill will of the employer's representative.

The paid representative of the union occupies a position of greater strength also because in the very nature of the case he has had time and facilities for acquainting himself with the matter to be discussed. Unlike the employee representative, who can take time for research and consideration of the issues involved only at the end of a day's work, when he is physically wearied from labor, the union representative has all of his energies free to be devoted to the subject in hand. Furthermore, the union representative who is engaged constantly in negotiations in behalf of the union and in consideration of its interests acquires a skill in bargaining that the worker at the bench or forge is unable to develop. Coming in contact with

the employers' organization and point of view not at irregular intervals, but with considerable frequency, the union representative becomes familiar with the situation and knows in advance what many of the arguments are that he will have to meet. He is, therefore, less apt to be surprised and put out of countenance by the wit of the employer than an equally capable man might be who had not had the opportunity to acquire skill in collective bargaining.

Another reason why a union is a better bargaining unit from the employee's point of view than the shop organization is that the latter has no strength outside of itself. A union organized not in one shop, but in many, with locals scattered over a wide area, is able to bring to bear on a local situation resources that are entirely lacking to a purely local organization. These resources include a greater knowledge of the industry because of a wider acquaintance made possible by a more extensive contact. They include a treasury, which will vastly outweigh anything that could be accumulated by the workers of a single plant. The union also is in a position to develop moral strength through its connection with the organized labor movement as a whole. This has an important effect on a local controversy and at any time may be transformed into a practical increment of strength on account of the financial aid that may be given by other unions.

These are some of the reasons for trade-union opposition to the shop-committee movement. As an agency for protecting the workers and advancing their interests, the shop committee appears to be a weaker instrument than the union. In addition to that, most shop committees have been brought into being on the initiative of the employers rather than that of the workers. Many of them have been

introduced as substitutes for the union, having been organized at the suggestion of the employer when a strike was brewing, or at the close of an unsuccessful strike, or when an organizing compaign was under way. This is not true of all shop-committee plans, but it is true of so many of them that the union leaders have developed a very keen suspicion of the whole movement. Numerous cases have also come to their attention where the employer has deliberately intervened to secure control of the shop committee, sometimes by interference with elections. A large employer of labor who organized a shop committee at a time of union agitation in his industry has told me recently that the whole aim of the shop-committee movement is to head off unionism. That, he pointed out, was its principal merit.

It should be noted, however, that there are two tendencies in the shop-committee movement. One is in the direction of granting a real measure of power to the employees, and the other is in the direction of preventing such a development by offering the form for the substance. There are some shop organizations which are apparently democratic both in conception and in organization, and which constitute a real advance in the relationship between employer and employees.[1]

THE BASIS FOR COLLECTIVE BARGAINING

In its natural and traditional form, American trade-unionism exists on a craft basis; that is, the organizations are of groups of workers possessed of a similar kind of skill. We do not have *labor* unions—organizations of wage earners on purely class lines—but we have *trade*

[1] For a further discussion of shop committees, see chap. ix.

unions, limited to the workers in a particular trade or craft, as bricklayers, machinists, plumbers, etc. This was natural enough when the better-established American unions came into being, because individual industrial enterprises were then much smaller than they are now, and also because specialization had not been carried so far, and the skilled employees constituted a larger proportion in any plant than is now the case. It was natural also because organization takes place among those who are conscious of the need of it, and have similar problems. The men who meet day by day and work at the same task naturally recognize the existence of a common need, and equally naturally they join forces with each other instead of with strangers whose needs may be different from their own.

The principal advantage of craft organization is the fact that members of a union have similar problems and are more apt to be a unit in their attitude toward a solution of those problems. But there are disadvantages in craft organization to which attention has frequently been called. With the development of modern large-scale industry, there are many more crafts at work in the same enterprise than was the case forty years ago. Industrial concerns have arisen which are responsible for more different stages in manufacturing than was the case at an earlier period in our industrial development. There are, for example, such great plants as that of the General Electric Company at Schenectady, N. Y., employing more than 20,000 men in a dozen different crafts, and with a body of unskilled laborers probably greater than all of the craftsmen put together. The same is true of the various plants of the International Harvester Company and the United States Steel Corporation. In such an enterprise

it is possible for the employer to take advantage of the divergent loyalty of the different craftsmen and play one off against another. If the employer can take up a wage contract for these different unions one at a time, his advantage in bargaining strength is as great as if only one group were organized, instead of many. In the course of the negotiations one group may go on strike, but the others remain at work. When this particular issue is settled the next organization may go on strike in connection with its demands. By this time the first union is back at work. Of course, this difficulty may be met in part by an insistence on the part of the unions that all wage agreements shall terminate at the same time. This is not always done, however, and the difficulty from the union point of view is a real one.

Another weakness of the craft system of organization is that it leads to jurisdictional disputes. With industry constantly developing and changing, the character of the work may be so changed as to make it difficult to decide where the work of one craft stops and another begins. The quarrels that arise out of this situation are particularly characteristic of the building trades. These disputes sometimes lead to prolonged strikes, which are of little advantage to anyone and often involve the employer in serious losses.

Another tendency in craft unionism which is of importance to the labor movement as a whole is the fact that the unskilled are apt to be overlooked unless there is an organization intended for the unskilled alone, as is true of the Hod Carriers' Union in the building trades. The unskilled are apt to find themselves in a craft union world in which there is no organization suited to their needs.

INDUSTRIAL UNIONISM

On account of these disadvantages, there is a constant movement in the direction of amalgamation of similar craft unions, and the development of industrial organizations to take the place of craft unions. The basis for a true industrial union is the industry instead of the craft. It is proposed that all of the workmen in a given industrial enterprise shall be members of the same union, the classification depending upon product rather than upon skill. Under this scheme of organization all of the workers in the building trades would belong to one organization. A machinist in an automobile shop would belong to an automobile union, and not to a machinists' organization. A machinist in a railway shop would belong to an organization of railway employees, and so on.

Officially the American labor movement as expressed by the American Federation of Labor is opposed to industrial unionism. Advocates of that form of organization have frequently offered resolutions at Federation conventions, having as their purpose the approval of the industrial as opposed to the craft form of organization. Such resolutions have always been voted down, and on the part of the leaders of the Federation there is the bitterest sort of opposition to the industrial union movement. The particular objection, apparently, is the fear that the interests of the different trades would not be sufficiently safeguarded in an organization of which other trades with different interests are also a part. A trade numerically small might be swallowed up and its interests forgotten in an organization overwhelmingly dominated by crafts having a larger membership.

Another factor that is undoubtedly influential in deter-

mining the attitude of the Federation on this subject is a natural hesitancy about turning away from established methods to those that are new and different. Members of the craft unions, which constitute the majority of the membership of the American Federation of Labor, are very loyal to their organizations and proud of their history. They dislike to take a position that will suggest that their methods in the past have been unwise. At the same time there is a clannish aversion to merging the identity of the different organizations with other and partially alien groups. It may be that this aversion is felt more acutely sometimes by officers who might be displaced or relegated to an inferior position if amalgamation were to take place, but it undoubtedly exists to a certain extent in the rank and file as well.

The intensity of the opposition to industrial unionism on the part of the leaders of the American Federation of Labor is influenced also by the position that it occupies in radical thought. In the popular mind, and in the minds of conservative labor leaders as well, the idea of industrial unionism is identical with industrial and political radicalism. While this form of organization is frequently advocated by constructive conservatives on the ground that it is a more effective method of organization, it is true that industrial radicals all over the world are also opposed to craft unionism and in favor of industrial organization. In the United States the I. W. W. plan of organization is on industrial lines, and the leaders of that organization have everywhere attacked and condemned the American Federation of Labor for its craft-union policy. The Communists are a unit in favor of industrial organization. The desire of Federation leaders to be thought conservative, and their hatred of both of

these organizations, are undoubtedly factors in the persistence of their opposition to the industrial union idea.

Nevertheless, there is a tendency within the ranks of the American Federation of Labor in the direction of the joint action which industrial unionism implies, and there are even some examples of industrial unionism itself. The United Mine Workers of America, the largest union affiliated with the American Federation of Labor, having a membership of more than 500,000, is industrial in form. The union includes in its membership all workers in and around coal mines. Consequently, the carpenters, hoisting engineers, track layers, teamsters, and laborers employed about the mines, instead of belonging to separate organizations, are members of the mine workers' union. The Mine, Mill, and Smelter Workers' Union, the organization to which the workers in metalliferous mines belong, is also an industrial union. The same is true of the Brewery and Soft Drink Workers.

Recognition of the need of closer affiliation has manifested itself in the organization of the so-called departments in the American Federation of Labor. Each of the four departments holds an annual convention, and the most active ones—those embracing the building trades and the railway trades—have been able to plan joint action with respect to matters of importance to their trades. The Building Trades Department, in conjunction with the architects and building contractors, have worked out a plan for the avoidance of jurisdictional strikes. An arbitration board has been set up by these different organizations, which has jurisdiction throughout the building industry and through which a body of common law is being built up for the governing of affairs in the building trades. The Railway Employees Department has been ef-

fective in securing action among the nine railway unions that are affiliated with the Federation. The strike of 1922 on the railroads was conducted by the Department, and thereby a nearer approach to amalgamation and unanimity of action was reached than ever before. The individual unions involved in the strike retained their right to govern themselves as they pleased, but as a matter of fact the executive officers of the different crafts involved in the strike constituted themselves into a policy board presided over by the president of the Railway Employees Department, who was looked upon as the leader of the strike, and who was the chief spokesman for the strikers.

Only once before have a large number of unions pooled their interests in any such way—in the steel strike of 1919-20. That strike serves very well to illustrate the position of American labor with respect to division of crafts and at the same time it shows the possibilities of co-operation. The organizing campaign preceding the strike had to be carried on almost altogether from the outside, because the steel industry was almost 100 per cent non-union. Accordingly, it was a move from the outside by the American Federation of Labor. On canvassing the situation, it was found that the employees in the steel industry in the United States were eligible to membership in twenty-four separate craft unions affiliated with the American Federation of Labor. Accordingly, the organizing committee was made up of representatives of these twenty-four unions. In carrying on the campaign mass meetings were held, and union cards were issued to the steel workers who came forward and indicated their desire to join the union movement. Each individual joining in this way was asked to sign his name on a card, giving the name and description of his job. These

cards were taken to organizing headquarters, and were sorted into different piles according to the craft union to which the individual applicants were eligible. Meetings were then called of separate crafts, and the applicants were inducted into the different craft unions. Thus there was first a centralizing and then a decentralizing movement. The third movement was in the direction of centralization again. After the local unions of the different crafts had been formed in any particular steel mill, delegates were elected from each craft to a "steelworks council." The latter, if the strike had been a success, would have been the executive and bargaining group for all of the unions in that particular mill. The same method had been followed a year or two before in organizing the meat-packing industry.[1]

TRADE-UNION PHILOSOPHY

In attempting to consider the point of view and the objectives of unionism it is necessary to emphasize the point so clearly made by Professor Hoxie in his study of American trade-unionism to the effect that the union movement is not a single entity. It is impossible to speak either of the labor movement or of the union movement as if it were a single, undivided whole acting with one mind and intent upon a single goal. That is no more true in the labor movement than it is in politics or in the church. In the labor movement, as in all groups and organizations of human beings, there are many ideals and many conceptions of the end to be sought and many ways of achieving that end.

Any attempt to classify the different types of trade-

[1] For a description of the organizing method in the steel campaign see *The Great Steel Strike*, by Wm. Z. Foster.

unionism must be made with this fundamental truth in mind. It seems possible, however, to identify three different general types—the conservative, the radical, and the revolutionary. This differs somewhat from Professor Hoxie's very interesting classification of business unionism, uplift unionism, revolutionary unionism, and predatory unionism.[1] The latter is a very valuable and suggestive classification, but it is at times difficult to assign a particular union to membership in one of the groups suggested. This difficulty seems to me to be less with respect to the simpler classification suggested above, though I am quite ready to admit that this is probably due more to point of view than anything else, and that to another my classification may seem equally difficult and illogical. Since an exact and complete classification is impossible, however, the matter is not as important as it otherwise would be. Any classification is useful that provides a convenient basis for describing some of the tendencies which are to be observed in the labor movement, and that is the only purpose that the one offered here is intended to serve.

Conservative unionism corresponds in many respects to Hoxie's business unionism. The distinguishing characteristic of this type of union is that it accepts the existing social order; it has no desire or intention of effecting any fundamental change in it. Indeed, the true conservative unionist is bitterly opposed to those groups in society that would bring about radical change. The conservative unionist is not consciously seeking to undermine the position of the employer, but is seeking rather, under the existing order, to secure more and more for the workers without changing in any vital respect the relationship of

[1] Hoxie, *Trade Unionism in the United States*, chap. iii.

the worker to his employer. The tendency of the conservative unions to enter into long-time agreements with their employers is frequently commented on with scorn by more radical unionists.

Radical unions, in the sense in which the term is here used,[1] are not those which are attacking and seeking to overthrow the existing order; they are not setting out definitely to overthrow it, but they do desire far-reaching changes. They want higher wages and better conditions, just as the conservative unions do, but they are also looking forward to a change in the relationship between employer and employee. In many respects the railroad brotherhoods are among the most conservative of the unions. However, in so far as they are advocates of the Plumb plan for operating the railroads, they may be said to be radical unions. For if the Plumb plan were to be adopted, it would effect a vital change in the relationship of the workers to their employers. The Amalgamated Clothing Workers is a radical union despite the fact that there is no union whose influence is more constantly thrown on the side of orderly progress through constitutional means. It is radical because, while seeking progress to-day, it has as its ultimate goal control of industry by the workers.

The essential characteristic of the revolutionary union is that it intends to destroy capitalism. The revolutionary union carries on the struggle not only to better conditions for the workers, but to weaken the employer. It does not enter into time agreements with the employer; it does not make peace with him. It accepts a temporary truce, re-

[1] The word is here used in its correct sense as implying a philosophy involving fundamentals, something thoroughgoing and complete. Its common use to imply something revolutionary or dangerous is a distortion of the true significance of the word.

taining freedom always to renew the assault whenever the time seems propitious. The revolutionary union differs from the radical union in placing first emphasis on the ultimate goal and in regarding the day-by-day steps necessary to attain it as of lesser importance. It is extremely class conscious, and, so far as labor is concerned, idealistic. The revolutionary union differs also from the radical union in method. Its dependence is upon force rather than bargaining. Time agreements are utterly rejected as tying the hands of the workers and making it impossible for them to advance whenever the occasion seems to warrant. Direct action is their weapon, not necessarily in the sense of violence, but in the sense of strike and sabotage. The outstanding type of revolutionary union in this country is, of course, the Industrial Workers of the World.

It is necessary to state, as was indicated above, that there is not always a clear-cut distinction of the sort indicated here. Within the same union you are apt to find representatives of the conservative, the radical, and the revolutionary type of unionism. The attitude of the particular group that happens to be in power is what determines the classification of the union as a whole. If the conservatives are in the saddle, it is a conservative union, and so if the radicals or revolutionists are in control.

In the main, American trade unions belong in the conservative group. In half a dozen of them, however, it would not take a great change in the balance of power to throw them into the radical group. At times, on certain issues, even the American Federation of Labor, in its conventions has taken action that would have to be characterized as radical. Nevertheless, upon the whole, it may be said that Mr. Gompers truly represents the feel-

ing of American labor when he says that the unions are concerned with "improving the conditions of the working men, women, and children, to-day, to-morrow and to-morrow's to-morrow, making each day a better day than the one which went before."

READING REFERENCES

ADAMS AND SUMNER: *Labor Problems.*
American Federation of Labor History, Encyclopedia, Reference Book.
BAKER, R. S.: *The New Industrial Unrest.*
BEARD, MARY R.: *Short History of the American Labor Movement.*
BLOOMFIELD, DANIEL: *Modern Industrial Movements.*
BRISSENDEN, PAUL F.: *History of the I. W. W.*
BROOKS, J. G.: *Labor's Challenge to the Social Order.*
——— *American Syndicalism, the I. W. W.*
BUDISH AND SOULE: *The New Unionism.*
CARLTON, F. T.: *History and Problems of Organized Labor.*
——— *Organized Labor in American History,* pp. 189-197.
COHEN, J. H.: *Law and Order in Industry.*
COLE, G. D. H.: *The World of Labor.*
COMMONS, JOHN R.: *Labor and Administration.*
COMMONS AND ASSOCIATES: *History of Labor in the United States.*
ELY, R. T.: *Labor Movement in America.*
FOSTER, WM. Z.: *The Great Steel Strike.*
GROAT, G. G.: *Organized Labor in America.*
HENRY, ALICE: *The Trade Union Woman.*
HOLLANDER AND BARNETT: *Studies in American Trade Unionism.*
HOXIE, R. F.: *Trade Unionism in the United States.*
MACDONALD, J. RAMSAY: *The Social Unrest.*
MACIVER, R. M.: *Labor in the Changing World.*

MAROT, HELEN: *American Labor Unions.*

PARKER, CARLETON: *The Casual Laborer* (chapter on the I. W. W.).

PERLMAN, SELIG: *History of Trade Unionism in the United States.*

PORTENAR, A. J.: *Organized Labor.*

SAVAGE, MARION: *Industrial Unionism.*

SCHAFFNER, MARGARET: *Labor Contract from Individual to Collective Bargaining.*

TANNENBAUM, FRANK S.: *The Labor Movement.*

U. S. Industrial Commission (1901)—Report—vol. xvii, part i, pp. xv-xxxi; pp. l, lxix.

WARD, HARRY: *The Labor Movement.*

WEBB, SIDNEY AND BEATRICE: *History of Trade Unionism.*

——— *Industrial Democracy.*

CHAPTER VIII

THE EMPLOYER'S POINT OF VIEW

THE employer is not necessarily hostile to unions. The employer members of the United States Commission on Industrial Relations in their separate report made this statement: "Representing as we do on this Commission the employers' side, we are at one with the other members . . . in believing that, under modern industrial conditions, collective bargaining, when fairly and properly conducted, is conducive to the best good of the employer, the worker, and society." [1] This is a recommendation of collective bargaining rather than of trade-unionism, but elsewhere these commissioners mention as a legitimate cause of unrest the fact that some employers have prevented their employees from joining unions.

Absence of hostility to the unions is indicated by the relations actually existing between certain employers or groups of employers and unions with which they have agreements. There have been no strikes in the shops of the Stove Founders' National Defense Association for a period of more than thirty years, a period during which there has been a continuous collective bargaining agreement with the molders' union. The Secretary of the Stove Founders' National Defense Association, in testi-

[1] Report of Commissioners Weinstock, Ballard and Aishton. Report of United States Commission on Industrial Relations, vol. i, p. 235.

fying before the Industrial Relations Commission in 1914 concerning their agreement with the molders, said: "In the first place, since they started making these agreements they have had no strikes. That is one great thing, and they have always managed to make agreements with these men and have them carried out." [1] The agreement referred to in this testimony is still in effect, and the no-strike record is still unbroken. Similar amicable relations are to be found in other industries.

This is not altogether surprising, because as a matter of fact the worker is not the sole beneficiary of labor organization. There are certain advantages for the employer as well. Unless the working force is very small, an employer cannot know the state of mind and point of view of his employees excepting through conference with their representatives. An organization may therefore keep him informed as to matters about which otherwise he would be in ignorance. A large employer of labor has said that no man is big enough to know what is best for a thousand other men. He needs the assistance and advice of those other men in working out policies which will be advantageous to all concerned.

A most convincing evidence of this sort of thing appeared in the testimony given by the late Joseph Schaffner of the firm of Hart, Schaffner, and Marx, the Chicago clothing house, before the United States Commission on Industrial Relations in 1914. Mr. Schaffner was testifying about the agreement that he had at that time with his employees. Asked how it came about, he related the following incident: Some years before the firm was celebrating an anniversary of its founding. A friend stepped

[1] U. S. Commission on Industrial Relations, Final Report and Testimony, vol. i, p. 519.

into Mr. Schaffner's office to congratulate him upon the great business that he had built up and the obstacles that had been overcome. Mr. Schaffner said that he thanked his friend for his kindly expressions, but said to him: "There is one thing in which we take greater pride than any of the things that you have mentioned, and that is our great body of satisfied employees."

"I thought they were satisfied," continued Mr. Schaffner, "but the next week they all went on strike." Then he went on to tell how through the strike he discovered what he had not known before—that grievances remained unredressed, that petty tyrannies created constant irritation. The men were without organization, and had no means by which they could acquaint the responsible owners of the business with their needs and desires. Indeed, the industry was so organized as to prevent information coming from the rank and file to the management. The men had to strike in order to let Mr. Schaffner know that they were dissatisfied. As a result of that experience a beginning was made of that organization which built up the impartial machinery which has since extended itself very largely throughout the industry.

The machinery thus developed has apparently been exceptionally satisfactory in the establishment where it first went into operation. On a visit of inquiry after the plan had been in operation a number of years the writer was struck by the fact that representatives of both parties to the agreement used identical expressions concerning it. Both said: "We have got to make this agreement work," meaning very clearly that the agreement was so important that no matters of minor importance could be permitted to threaten its continued existence.

A labor organization that extends throughout an indus-

try or a trade may be useful to an employer in leveling competition. There is danger, in the absence of any restraining force, that conditions of labor in an industry will be dictated by the meanest competitor. It is doubtful if it is ever true that the lowest wages and the longest hours are the most economical, but neither is the converse of that proposition necessarily true. Consequently, in the absence of any restraining force the tendency is for the level of industrial conditions to be kept down by the more grasping and less considerate employers. The employer desiring to maintain good conditions in his shop may therefore welcome a force which will make it necessary for his competitor to come up to the same level.

Stability is another economic advantage that may follow the signing of an agreement with an organization of workers. Labor costs, at least, will be established during the period of the agreement. Another result will be the elimination of guerilla warfare. The union cannot compel its members to work, but its influence will be thrown on the side of stability and order. Negotiations for changed conditions will take place at times previously understood and there will be little likelihood of sudden ambush taking the employer at a disadvantage.

As a result of all this, there exists among certain employers much good will toward the unions. Nevertheless, it is clearly apparent that this sympathy seldom goes so far as to indicate a desire to have union influence and strength further extended. Under the most favorable conditions the sympathetic employer refrains from doing anything to weaken the unions. At the other extreme there are unsympathetic and hostile employers whose opposition is keen and persistent, and who would destroy unionism root and branch if they had the opportunity to

do so. It is probable, on the whole, that the majority of employers in America tend toward the latter rather than toward the former view.

BUSINESS PROBLEMS

In order to understand why this is so, it is necessary first to consider briefly some of the problems of management. The responsibility for making the enterprise go rests upon the manager. The problem of getting business, of making collections, of paying bills, including what is ordinarily the largest bill of all, the payroll, rests upon his shoulders. He has to meet not alone the claims of labor, but the claims of capital. While labor is clamoring for wages, stockholders are clamoring for dividends. The manager often feels that he is being ground between the upper and the nether millstone. He is obliged also to watch his competitor. He does not feel that he can afford to become too advanced in meeting the demands of labor, lest other manufacturers who do not meet the demands in the same way may be able to undercut him in the market.

In addition to these problems of management there are certain specific labor problems which must engage his attention. He must get a competent labor force if he can, and, having got it, retain its services. Furthermore, after having secured such a force, he has before him the problem of getting work done. He is handicapped by reason of the fact that some of the employees lack training, others lack interest, and others are unwilling to work steadily and energetically.

All of these are very serious problems of management. They represent hurdles that the man who would gain a reputation for successful management must take. They

are obstacles to be surmounted, difficulties to be overcome. They are great enough, in all conscience, the manager feels. Consequently, when on top of them word comes that the employees are considering joining a union or that they have joined a union and have appointed a committee to confer with him, he lifts his hands to high heaven and asks whether his trials have not been great enough before, without having visited upon him this additional calamity. It is not always the assurance that the coming of the union will mean trouble that worries the manager; it represents an unknown quantity; it is a new factor to be dealt with. He does not know whether it will increase his burden or not, but he feels that the chance is too great for him to take.

It is likely that any manager would feel that way even if he knew nothing about unions, but there are also certain specific and tangible objections based upon rumor or experience, and these objections occur with compelling force when a union campaign begins in any particular plant. Some of the objections are couched in very general terms. The average employer is opposed to what he calls "agitation." The union claims that the greatest agitator in the direction of promoting a desire to revolt is the existence of bad conditions. The employer, however, is apt to believe that it is the agitator who creates dissatisfaction rather than the conditions prevailing in the shop. There is a widespread objection, furthermore, to anything that constitutes an interference with business. This is a general objection covering all interference, both legitimate and illegitimate. It is the natural protest of one possessed of a certain amount of power against any movement or set of circumstances which seems to threaten that power.

SPECIFIC OBJECTIONS

The objections in the main, however, center around certain specific practices, either actual or alleged, and these include, in particular, sympathetic strikes, jurisdictional disputes, restriction of output, closed shop, breaking of agreements, and violence. These are the principal objections to unions enumerated by the employer members of the United States Commission on Industrial Relations.[1] It will be noted that the first two of these practices involve situations where the employer is not a party to the dispute. A sympathetic strike is a strike directed against an employer when no specific demand has been made upon him and no specific complaint exists. It is for the purpose of assisting workers in another trade or another community. Truckmen, for example, may refuse to handle goods unloaded from ships by non-union longshoremen. It is easy to understand both the employer's objection to and his resentment over the sympathetic strike. He is injured by it even though he had nothing to do with fixing the conditions in the industry where the complaint exists. It is doubtful whether sympathetic strikes are of as much practical benefit to the workers in whose behalf they are ordered as is sometimes believed.

Strikes for jurisdictional purposes are also especially irritating, perhaps even more so than sympathetic strikes. A jurisdictional dispute takes place when two unions quarrel as to which should have a particular piece of work. They are particularly characteristic of building operations where with doors and trim frequently made of sheet metal it is difficult to say whether the job of installation belongs to a carpenter or a sheet-metal worker. The elevator con-

[1] Vol. i, of Report and Testimony, p. 231.

structors have their quarrels with the structural iron workers' union, the plumbers with the steam fitters, and so on. There have been a good many cases where union A has demanded the right to do work that was assigned to union B, and where the employer, having yielded and given the work to union A, found himself threatened with a strike from union B. There have been cases when an employer has offered to pay both unions, one to do the work and the other to sit in idleness while it was being done, and has had the proposition rejected. Of course the union is trying to establish its claim not alone to the particular work in hand, but to all work of a similar character hereafter to be engaged in. To accept pay for permitting another union to do the work would not only postpone the issue, but make it so much the harder to settle when next it arose.

RESTRICTION OF OUTPUT

The two greatest of the employers' objections to unions probably center about the charge of restriction of output and the closed shop. Limitation of output is an important and serious factor in modern industry. It appears in several forms. There may be an absolute limit on the amount of work to be done. Bricklayers may agree among themselves to lay so many bricks per day and no more. The lathers' union has a limit on the number of bundles of lath that may be nailed up in a day. The plasterers have an agreement as to the number of square feet that are to be covered. Limitations can be accomplished also by a restriction in the use of tools. The painters will not use brushes of more than a certain width, and they refuse altogether to use a machine that will spray paint on the article to be covered even where such a

method would produce satisfactory results. One of the reasons for this is the belief that such a practice is dangerous to the health of the painter, as it probably is when the work is done in closely confined quarters. Out of doors the machine would probably prove less dangerous. Another method of restricting output is by time-consuming practices. The typographical union has a rule that matter coming into the shop in the form of electroplates must be reset by the compositor. This work is sometimes done after the matter itself has appeared in print.

Light on more than one phase of restriction of output is afforded by the experience of the late Frederick W. Taylor, the eminent exponent of scientific management, when he was gang boss in a machine shop more than forty years ago. As soon as he was promoted to this position the men came to him and warned him not to try to increase the output of the machines. What happened then Mr. Taylor later narrated as follows: [1]

"The writer told them plainly that he was now working on the side of the management, and that he proposed to do whatever he could to get a fair day's work out of the lathes. This immediately started a war; in most cases a friendly war, because the men who were under him were his personal friends, but none the less a war, which as time went on grew more and more bitter. The writer used every expedient to make them do a fair day's work, such as discharging or lowering the wages of the more stubborn men who refused to make any improvement, and such as lowering the piece-work price, hiring green men, and personally teaching them how to do the work, with the promise from them that when they had learned how, they would then do a fair day's work. While the men constantly brought such pressure to bear (both inside and outside the works) upon all those who started to in-

[1] *Principles of Scientific Management.* P. 49 ff.

crease their output that they were finally compelled to do about as the rest did, or else quit. No one who has not had this experience can have an idea of the bitterness which is gradually developed in such a struggle. In a war of this kind the workmen have one expedient which is usually effective. They use their ingenuity to contrive various ways in which the machines which they are running are broken or damaged—apparently by accident, or in the regular course of work—and this they always lay at the door of the foreman, who has forced them to drive the machine so hard that it is overstrained and is being ruined. And there are few foremen indeed who are able to stand up against the combined pressure of all of the men in the shop. In this case the problem was complicated by the fact that the shop ran both day and night . . .

"After about three years of this kind of struggling, the output of the machines had been materially increased, in many cases doubled, and as a result the writer had been promoted from one gang-bossship to another until he became foreman of the shop. For any right-minded man, however, this success is in no sense a recompense for the bitter relations which he is forced to maintain with all of those around him. Life which is one continuous struggle with other men is hardly worth living. His workman friends came to him continually and asked him, in a personal, friendly way, whether he would advise them, for their own best interest, to turn out more work. And, as a truthful man, he had to tell them that if he were in their place he would fight against turning out any more work, just as they were doing, because under the piece-work system they would be allowed to earn no more wages than they had been earning, and yet they would be made to work harder."

It was in large part this experience that led Mr. Taylor's thought in the direction of the new type of management which bears his name.

THE CLOSED SHOP

Careful definitions are necessary in this field. There is a closed non-union shop, where union men are not permitted to work, as well as a closed union shop. There is difficulty also, about the term "open shop." Some shops that are called open are not open in any effective way to union men, and in any case a union man is prevented from making use of his union in the so-called open shop, and therefore it may be said to be closed to the union, though not to the union-member. This is important, because when closed to the union the union member has to come in on the same basis as the non-union man, and the general effect is to establish the closed non-union shop.[1]

The employer is opposed to the closed union shop. In some cases the closed union shop means that a man must be a member of the union before he can be employed. In other cases the employer is free to select his employees, but a non-union man, if hired, must join the union soon after accepting employment.

The employer objects to the closed shop first because it can be maintained only through his active co-operation. He is expected to reject non-union men or discharge them after hiring, whether they are good workmen or not. He acts, therefore, as a union agent, compelling workers to join and remain in good standing with their unions. This in itself is naturally distasteful. It is easy enough to understand also the employer's reluctance over compelling a man to join an organization that he does not wish to join of his own accord. John D. Rockefeller, Jr., told a Congressional Investigating Committee during the Colo-

[1] See "The Open and the Closed Shop," by John A. Fitch, *The American Review*, March-April, 1923.

rado strike in 1913-14 that he would rather lose his entire fortune than compel the men to join unions.

In the second place, the closed shop deprives the employer of the right of free selection of his own employees, and in the same way limits his right of discharge. It takes away from him, therefore, certain powers of utmost importance in maintaining his supremacy, and it may interfere seriously with his ability to maintain the efficiency of his shop. A third objection of the employer to the closed shop is that it gives the union great power without corresponding responsibility.

The belief that unions do not respect their agreements is one that goes far in determining the attitude of some employers. It is a charge that is more difficult to deal with than some of the others, because it is almost impossible to obtain enough facts to justify the drawing of conclusions. Doubtless some unions keep their agreements and some do not, just as is the case with other groups of people.

Perhaps the matter may be clarified somewhat if we understand that a union agreement is not ordinarily a legal contract. Complaint is frequently made that an employer is a responsible party and can be compelled in court to keep his contract, while the union is irresponsible and cannot be so compelled. As a matter of fact, the contract is always between the employer and the individuals who are in his employ. The union comes in for the purpose of entering into a gentleman's agreement with the employer concerning the nature of this contract. In the very nature of the case the union could not enter into an agreement to supply labor; it does not control labor in the sense that a similar group might control inanimate commodities. Labor belongs inseparably to the individ-

ual worker, and he is the only one who can deliver it. The agreement between the union and the employer is neither that the union will furnish labor nor that the employer will offer employment. Instead, it is an understanding that if the employer does choose to employ anyone he will hire him in accordance with the terms agreed upon with the union. It is quite true that the union cannot be compelled in court to keep the agreement, but so far as his relations with the union are concerned, neither can the employer be compelled to do so. If, after hiring workers in accordance with the terms of the agreement, he failed to pay the scale agreed upon, it doubtless could be shown in court that an implied contract existed between the employer and each individual workman to pay the union scale.[1] The union, on the other hand, can be enjoined from interfering with a contract that has been entered into with the individual employees. In such a case it may be enjoined from fomenting a strike or entering into a conspiracy for the purpose of inducing the employees to violate their contracts.

One of the most important objections to unions is the belief that they frequently commit acts of violence upon the property of the employer and upon the persons of non-union men and strike-breakers. If there were any doubt as to the existence in any union quarter of a policy of violence it would be necessary only to refer to the MacNamaras and the dynamite case. The first involved the blowing up of the Times Building in Los Angeles, with an attendant loss of twenty-one lives; the other was part of the same campaign that precipitated the Times Building horror. It involved some of the officers of the Structural Iron Workers' Union who, it was shown in

[1] Cf 24 *Columbia Law Review* 409, and cases there cited.

the trial at Indianapolis in 1913, had carried on a country-wide campaign of violence against the property of the National Erectors' Association. Violence has emerged frequently at the coal mines; the massacre at Herrin, Illinois, in 1922 will not soon be forgotten. There is plenty of evidence of the use of violence in building-trades disputes, and in New York the garment workers' strikes have at different times been noteworthy for this reason. This, however, is not the place for a full discussion of the subject of violence in connection with strikes and industrial controversies. The subject is too important for brief or casual treatment. It will be discussed more fully, therefore, in a later chapter.[1]

There is no thought in the mind of the writer that he has presented here a sufficiently complete statement of the attitude of the employer, nor one that will be necessarily acceptable to any particular employer. This is rather his own statement of what seem to be the principal reasons for the widespread opposition to unions. It remains to consider their validity.

VALIDITY OF EMPLOYERS' CLAIMS

There can be no reasonable criticism of the employer's objections to suspensions of work where he is not responsible for the situation leading up to the suspension. Nothing could be more justly irritating to an employer than strikes for sympathetic and jurisdictional purposes, if as a matter of fact he is innocent of the causes leading to the strike and powerless to remedy them. At times something far more serious than irritation may be in-

[1] See chap. xii.

volved, such as the incurring of heavy loss or even bankruptcy.

The unions themselves recognize the evil of permitting a jurisdictional dispute to lead to a strike. The executive council of the American Federation of Labor, at a meeting held in August, 1922, expressed itself vigorously as opposed to strikes for this purpose. A year or two earlier the Building Trades Department of the American Federation of Labor decided to have no more jurisdictional strikes. Together with the building contractors, the architects, and the building owners, they established a National Board of Jurisdictional Awards. All disputes that cannot be settled on the job must come before the Board for adjudication, and, pending the award, the work in question is to go forward, being done by the class of workmen designated by the employer. When the Board make its finding the issue is supposed to be settled, and that has been the result of its findings, for the most part. In 1923, however, the carpenters' union refused to accept an award in a controversy between that union and the sheet-metal workers, and has withdrawn from the Building Trades Department. This act of bad faith on the part of the largest of the building-trades unions has not been sufficient to wreck the machinery, but it constitutes a serious menace to the effectiveness of the Board.

Having pointed out the evils of sympathetic and jurisdictional strikes, it should be remarked that there are not nearly as many of either as the amount of talk about them would seem to imply. In the period 1916 to 1921, inclusive, the proportion of all strikes reported by the United States Bureau of Labor Statistics that were sympathetic in character ran as follows: 1916, 0.9 per cent; 1917, 1.6 per cent; 1918, 1 per cent; 1919, 3 per

cent; 1920, 2 per cent; 1921, 1.67 per cent. During the same period strikes for jurisdictional purposes constituted more than one-half of 1 per cent of all strikes only once, and then it was 0.6 per cent.[1]

More serious is the matter of restriction of output. There is every reason to believe that this practice exists independently of the unions. Frederick W. Taylor's experience quoted previously was in a non-union shop, and throughout his life he had little, if any, practical experience in organized industries. Yet his whole career was profoundly influenced by what he saw of "soldiering" and reduced production on the part of workingmen.

The same observation was made by the United States Commissioner of Labor, who stated in 1904, in a special report on restriction of output, that the practice "is found also among non-unionists, and may be said to be a widely prevalent view among all wage-earners. The non-unionist does not change his nature when he becomes a unionist; he merely acquires more power to do what he wanted to do before. In fact, some of the restrictions investigated have been found as strongly enforced in non-union establishments as in union establishments. Some of them have been in existence as trade customs or traditions for many years, and when with modern shop equipment the employers begin to infringe on the traditions, the union comes in to formulate and preserve them." [2]

Restriction of output is undoubtedly as irritating a practice as a sympathetic strike, and possibly as difficult to justify. An examination of the factors involved reveals, however, certain tangible causes which must be con-

[1] *Monthly Labor Review,* U. S. Bureau of Labor Statistics, June, 1921, p. 166.

[2] Eleventh Special Report, United States Commissioner of Labor, 1904, pp. 28-29.

sidered before one can judge of the merits of the practice, one way or the other.

Many cases of restriction have arisen directly out of the tendency to cut rates as a means of getting more work out of the employees. It used to be the practice in many shops, and to some extent it is still the practice, to fix the piece rate at a point where it is figured a man can about reach his objective in the matter of a day's wage. Then, in order to induce him to work harder, this rate is cut. He desires to continue to make as much money as before, and therefore speeds up in order to increase his output. Then the process is repeated. Where this method is in vogue the piece rate may be cut three or four times, until finally the workers are speeded up to an incredible degree and they are obliged to maintain such a rate of production in order to earn a respectable day's wage. The natural result of such a tendency is for the workers to get together and to agree upon a limit beyond which they will not produce and to establish this as a basis for negotiations for wages.[1] Once having set a limit for this purpose, the tendency is in the direction of increased restriction.

Restriction of output may be employed as a retaliatory measure or as a form of sabotage. This was recognized as a distinct practice abroad before it was either recognized or came into vogue in this country. In defining

[1] "It is, however, under piece work that the art of systematic soldiering is thoroughly developed; after a workman has had the price per piece of the work he is doing lowered two or three times, as a result of his having worked harder and increased his output, he is likely entirely to lose sight of his employer's side of the case and become imbued with a grim determination to have no more cuts if soldiering can prevent it." From a paper read by F. W. Taylor before the American Society of Engineers in June, 1903. Quoted in *Principles of Scientific Management*, p. 23.

the British term "Ca' canny," a report of the United States Commissioner of Labor in 1904, said, "The term is used to designate restrictions imposed for the sake of retaliation where the union is not strong enough to resort to a strike. It has not been found that this justification exists anywhere in the United States. Individual and local cases of restriction as a retaliatory measure on personal grounds are pointed out, but nowhere does restriction of output as a substitute strike policy exist in the United States." [1] Obviously this was written before the I. W. W. had introduced to American workers the term "sabotage." If this statement is to be accepted they were then as unacquainted with the practice as they were with the term.

Another sort of restriction of output is that engaged in for the sole purpose of making the job easy. There is evidence of this tendency whenever a decline in output is coincident with a scarcity of labor. When the workman has no fear whatever of losing his job he often has a tendency to go slow. Similar evidence appears when a change is made from a time rate to a piece rate. The output per man is usually increased as soon as this is done.

Beyond these reasons for restriction of output it should be recognized that there is a theory having wide acceptance among workingmen that the amount of work to be done is limited in amount, and that by curtailing output the job may be made to last longer or that more men may be required, thus lessening unemployment. In the long run this theory is utterly untenable. It is as unsound as opposition to labor-saving machinery. Income is significant only for the commodities it will purchase. It is the

[1] Eleventh Special Report, U. S. Commissioner of Labor, 1904, p. 28.

distribution of goods that makes for comfort, or the reverse. The more goods there are the more there is to divide.

While this is all very true, the workman often finds himself in a position where his immediate interests seem to call for a curtailment of production. The worker in a seasonal trade and the piece-work employee are often obliged to restrict output as their only defense against the methods of the sweatshop. Frederick W. Taylor mentioned as one of the causes of restriction of output "the defective systems of management which are in common use, and which make it necessary for each workman to soldier or work slowly in order that he may protect his own best interests." [1] There is more behind the phenomenon of soldiering than mere unwillingness to work hard. Until the wage-earner comes to possess positive rights comparable to those of the property owner, it is not likely that he will be able to recognize a sufficient identity of interest between himself and the industry as a whole to suggest that he should give the most loyal service of which he is capable.

The case for the closed union shop is very much like that for restriction of output. There are some obvious reasons why the closed shop exists, perhaps why it must exist, and yet the case for it is not altogether a good case. In a closed shop the union may subject the employer to hampering and uneconomic rules which decrease the efficiency of the shop and lessen its production. Weighed down as the union members naturally and necessarily are with the thought of the horrors of unemployment, there is danger that the closed union shop will become an agency for creating unnecessary jobs, to the injury of the in-

[1] *Principles of Scientific Management*, pp. 15-16.

dustry, to the injury of society, and in the long run to the injury of the union itself. There is danger that other hampering restrictions may be set up involving decreased output and increased cost.

Under the closed union shop, also, there is a dangerous possibility of graft and corruption. In this connection one thinks, naturally, of the recent revelations concerning the building trades in New York and Chicago. There is danger in the practice that gives autocratic power to individual union officers. It is noteworthy that we hear of graft of this kind principally in the building-trades unions, which, on account of certain strategic advantages that are to be gained by such a policy, have in some cases given their business agents exclusive power in the matter of calling and settling strikes. Most of the other unions require a majority vote at least of the local before a strike can be called. This brings matters into the open and makes the collection of graft difficult and unlikely. Irresponsible power in the hands of the business agent is not an essential feature of closed-shop unionism. It must be noted, however, that where such power is granted its misuse becomes far more serious if there is a closed shop.

Another evil of the closed union shop is that it tends to carelessness and inefficiency on the part of both leaders and rank and file. The atmosphere is not favorable to the development of qualities of statesmanship when the problem of getting support for the union is solved by the employer's refusing employment to non-members. The necessity for making the union so valuable to the workers generally that they will desire to join is lacking. There is danger under the closed union shop that the leaders will not have a sufficient stimulus to the exercise of imagina-

tion and vision, but will follow the safe path of routine activity.

The members, too, lack a proper stimulus under the closed shop. They do not fear an overthrow of their power, and so they relax their vigilance. It is easy to leave everything to the officers. They lose touch with the labor movement as a whole. Much of its idealism fades away. The union tends to become a tight little business organization conducted for the exclusive benefit of a single group.

In most respects the closed shop is undesirable for the reasons given above. The alternative is not, of course, the employers' "open shop," which is generally nothing but a closed shop against the union. This is far more dangerous a thing than the closed union shop, on account of the greater bargaining power of the employer. The desirable alternative is the shop where there are no restrictions on union membership, where the employer bargains with an open union concerning conditions prevailing throughout the shop and where nothing but the inherent desirability of union membership is the incentive to join. But this is a condition that is practically non-existent excepting in the case of the train-service brotherhoods. Elsewhere the right of collective bargaining is denied or so grudgingly recognized that the unions are obliged to build up the strongest possible fighting unit. This they have accomplished in the closed union shop. As long as employers maintain a fighting organization, having as its object the destruction of the unions, the latter will abandon their fighting organization at their peril.

We come back, then, to the basic fact of struggle. Whether we like it or not, there is a fight on between capital and labor. The tactics of either side can be ap-

praised only in the light of this fact. Given the fact of struggle, it is possible to understand the tactics employed, even though social or ethical justification may be quite another matter. In the following chapters we shall see more of these tactics.

READING REFERENCES

ADAMS AND SUMNER: *Labor Problems,* pp. 279-285.

BING, ALEXANDER: *War-time Strikes and Their Adjustment,* chaps. xiii and xvi.

BONNETT, C. E.: *Employers' Associations in the United States.*

BROOKS, J. G.: *Labor's Challenge to the Social Order,* chap. xviii.

GROAT, G. G.: *Organized Labor in America,* pp. 319-328.

HOXIE, R. F.: *Trade Unionism in the United States,* chap. viii.

ROCKEFELLER, J. D. JR.: Formal Statement before U. S. Commission on Industrial Relations, vol. viii, pp. 7763-7767; *The Survey,* vol. xxxiii, p. 480.

U. S. Commission on Industrial Relations—Final Report and Testimony, vol. i, pp. 61-68; 231-248.

National Association of Manufacturers of America: Publications of.

National Industrial Conference Board: Publications of.

Research Report No. 38: "Experience with Trade Union Agreements."

Special Report No. 5: "The Vital Issue in the Industrial Conference at Washington, October 6-23, 1919."

CHAPTER IX

OPPOSITION TO UNIONS—INDIRECT METHODS

THE figures of union membership presented in Chapter VI show that despite the rapid increase in numerical strength during the war period, a relatively small proportion of the wage-earners of the United States are members of unions. In view of the obvious advantages in organization, this fact seems to require explanation. A consideration of some conditions more or less peculiar to America may help to make the matter clear.

A new country, with undeveloped natural resources, presents a favorable atmosphere for the growth of just such an individualistic philosophy as has been characteristic of the history of America down to the present time. The fact that until within comparatively recent years it has been possible for any man who wished to do so to go out and get a farm, either for nothing or for very little, has had a profound influence in postponing the development of class consciousness. Besides the existence of free land there have been unrivaled opportunities for men of initiative to go into business and lay the foundations for acquiring a competency.

As a result, the average American boy has been taught to look forward to purely individual enterprise, through which he is supposed to be fully capable of caring for his own interests without the assistance of anyone else. This ideal has developed, furthermore, not only on the basis of an abstract philosophy, but out of the actual fact that

it has been possible and still is possible to a certain extent for wage-earners to climb in the economic scale as they cannot do in any of the older countries of the world. Through a considerable period of our history the wage-earner of one day has been the employer of the next. The fact that conditions are no longer so favorable for this sort of thing has not yet availed to check the spread of the belief that in America every man has an opportunity to carve out his own destiny alone and unaided.

Another reason for the slow growth of unions has been a lack of homogeneity in our population due to the influx each year of large numbers of non-English speaking peoples, unable to understand at once American conditions and representing many races; alien, both to America and to one another. This has not only made the process of understanding conditions in America infinitely more difficult for the immigrant, but on account of it the task of organization has become enormously greater than in a country like Great Britain, where everyone speaks the same tongue.

Professor W. Z. Ripley, in writing of his experiences as a labor adjuster during the war, spoke of the difficulties confronting the union organizer because of the presence of so many races and tongues in American industry:

> What about the difficulties incident to immigration laid upon the shoulders of the trade-union? In the effort to organize the workers in the steel mills, leaflets were distributed in six languages: English, Italian, Lithuanian, Hungarian, Slavonic, and Polish. Your staff of soap-box orators must be a varied one indeed. If you succeed in effecting an incipient organization, your difficulty becomes even greater in holding your people together. How can you get rooms enough or corner lots enough for a separate meeting for each

nationality, using interpreters as go-betweens? Your English-speaking branch may, of course, meet at headquarters on the first Monday of the month, reserving Wednesdays for the Jewish workers, and other days for the Italians. Or, if you have money enough, you may of course proceed with your union paper, as the Amalgamated Clothing Workers do with their *Advance*. At the close of the war, the *Advance* was publishing an edition in Yiddish, Italian, Polish, and Bohemian, as well as English, with one in Lithuanian contemplated. At the last Lawrence strike there were fifteen committees of five each, drawn from as many nationalities, trying to do business together. The tower of Babel, the congress at Versailles, a railroad reorganization reunion—not one of these is fairly comparable with such a resultant party. Finally, think how easy it is with malice aforethought sedulously to cultivate distrust in such an army. There is the opportunity for the professional promotor of national antagonism to set the Italian against the Austrian, the Jew against the Catholic and Gentile, and the Greek against the Pole. Some crafty work has been done by energetically encouraging the "one big union" idea, if the people manifest a possibility of developing craft unionism; or on the other hand of playing off the trade-organization plan against one big union if that happens to be a drawing card. And always in certain parts of the country, as at Lawrence, or in most of our large cities, you have the Irish-American policeman, ready to give expression to his innate sense of superiority over all these "dagoes," if it becomes a question of picketing, of intimidation, or of private police.[1]

Another factor in more recent years has been the entrance of women in large numbers into industry. Women are hard to organize because, in general, they do not take themselves seriously as wage-earners. Most young girls entering industry think of themselves as but

[1] "The Job at Babel's"—*Survey Graphic*, July 1, 1922, p. 449.

temporarily in that field. They expect to marry and preside over homes of their own. Their interest in industry is therefore casual, and they do not see why they should put themselves out particularly to improve conditions by striking or paying union dues. Of course, the young man entering industry also expects to marry, but this fact instead of making him less interested in bringing about the best possible conditions for the wage-earner, makes him more interested in it. He not only expects to stay in industry all of his life, but his need for getting all that he can out of it becomes greater as he becomes the head of a family. The indifference of the average girl and her unwillingness to take any steps toward improving working conditions have a tendency to depress the wage level, a result that is just as injurious to herself as it would be if she were to remain in industry, for it means a lower wage scale for her future husband. This is not sufficiently apparent, however, to cause the average young woman to be very deeply interested in organization.

These things are all of great importance to the labor movement of America, but it is probable, after all, that the most important obstacle to union organization is the opposition of employers. For reasons given in the preceding chapter, most employers are altogether opposed to the growth of unionism. Consequently, they use methods both direct and indirect for combating unionism and its growth. One of the most important of the methods of indirect attack is the adoption of certain phases of so-called welfare work.

WELFARE WORK

A spirit of good will and a desire to deal honestly and equitably cannot easily be conjured up for any specific

purpose. Ordinarily these are qualities that one simply possesses or does not possess. When they are present, however, they are marvelously effective in fostering co-operation. Hence it is that many an employer all unwittingly places obstacles in the way of the union organizer. Such an employer may, through a sense of justice, offer better conditions of employment than the union is able to get elsewhere through the threat of a strike. He may have an eight-hour day, pay a wage that is higher than the union scale, and provide in various ways for the welfare of his employees, and thus command their loyalty. Under such circumstances the workers may refuse to join a union, either because they fail to see how it can pay them to do it, or because they may feel that it would be an act of disloyalty to their employer, who has proved himself to be their friend.

Thus, through the introduction of policies founded on good-will, he may secure a considerable degree of immunity from labor trouble, and the union organizer may find that his efforts are futile. It would be hard to find a better or more commendable way of fighting the union than this very one of beating it at its own game. But that is not the method that is always employed. Some employers are not content to earn the good will of their employees and to deserve their loyalty, but they seize upon the policies of the employer of good intent and pervert them, so as to bind their employees to a subserviency which they misname loyalty. Thus they oppose the union by threatening their employees with the loss of privileges instead of opposing it by offering freely what may be as freely chosen as the better thing.

The word "welfare" with all of its excellent connotations may be used by such an employer to hide his op-

position to unionism. The enjoyment of the privileges offered may be made contingent upon acceptance of all of the employer's policies. For example, the Lake Carriers Association, an organization of employers engaged in operating boats on the Great Lakes, established some years ago what they called a welfare plan. It involved the building of club houses in the ports on the Great Lakes with certain comforts and privileges for sailors, but it was carried on under such conditions and under such rules as to make it the basis for a blacklisting scheme of far-reaching extent, which resulted in the elimination of unions from the boats on the Great Lakes.[1]

Professor Ripley, in the article previously quoted, tells a story of the perversion of welfare work:

Frequently during the war we ran foul of a most distorted conception of welfare work. Perhaps the most flagrant abuse of it was in the case of Clara Moskofska, an engaging Polish girl employed in one of the army-raincoat factories at Chicago. Production ceased for a large concern, employing several thousand people, because of the discharge of some forty or more workers for alleged union activity. It was a dramatic scene. The back of the federal court room was packed with the other employees on strike, while the test case of Clara Moskofska was being tried. It appeared that this young person had many friends, and, being about to attain to the ripe age of eighteen, a number of her fellow workers planned a surprise party on her birthday. One of the welfare workers employed by the firm, a graduate nurse, who appeared in full uniform to testify, suspecting that this gathering might be the occasion for an industrial getting-together—otherwise known as the formation of a union—informed the employer of her suspicions. She was thereupon deputed to make several visits to the outskirts of Chi-

[1] U. S. Bureau of Labor Statistics, Bulletin 235.

cago and to inform Clara's mother that if this birthday party were held, all of those who attended would lose their jobs. Who, if she had any spirit, would have declined such a challenge! The party was held. And every last participant was discharged, quite irrespective of the particular nature of the festivities. Quite certainly spies were present as guests. It was a monstrous invasion of the private and personal rights of these employees, and under our war-time regulations could not but result in the reinstatement of all of them, with payment for the time lost. The worst of it all was that neither the nurse nor the members of the firm turned a hair on the witness stand at this perversion of welfare activities.[1]

COMPANY UNIONS

Reference was made in an earlier chapter to shop committees or company unions for the purpose of comparing collective bargaining through such agencies with collective bargaining through trade unions. Shop committees were organized in large numbers during the war in industries where the workers had no organization of their own. They were fostered by the various labor adjustment boards so that there might be responsible spokesmen for the workers with whom the adjustment boards could confer. After the war many employers were favorable to a continuation of the plan, and shop committees were organized in many plants where they had not previously existed.

The shop committee is generally organized at the suggestion of the employer. Rules drawn up by him are offered to the employees for their consideration, and are generally accepted as written. In a word, the plans involve the election of committees by the workmen to meet similar committees representing management and to discuss mat-

[1] *Survey Graphic, op. cit.*

ters of common interest. Whether or not in the establishment of shop-committee plans the intent has been to insure the supremacy of the management, the tendency has at times been in that direction.[1] In the first place, as stated above, the plan is inaugurated by the employer. The details are worked out by the management, and the plan is then presented to the employees for their approval. Most of the shop-committee plans have been set up in establishments where there has been no previous form of collective bargaining. The employees therefore lack experience and at the same time are inclined to be timid about expressing themselves, particularly if their wishes run counter to the wishes of the management. As a consequence, the plan proposed by the company is generally accepted.

After the plan has been adopted, it often functions in a manner that does not foster habits of independence. Meetings of the employees as a whole are called only for the purpose of electing representatives. These representatives then serve on joint committees with representatives of the management. Definite provision is seldom made for holding separate representatives' meetings where they may agree upon either the content or the form of requests that are to be made to the management. It is pointed out by the promoters of these plans that there is nothing to prevent the employee's representatives from holding such separate meetings. The attitude of mind of the average worker is such, however, as to make them a practical impossibility.

Another custom which tends to limit the freedom of employees under the plan is that generally the election of representatives takes place in the shop and under com-

[1] Cf. Paul Douglas, *Journal of Political Economy*, February, 1921.

pany auspices. Under some plans the manager or superintendent takes full charge of the election and either counts the ballots in person or designates those who are to do so. Any such practice, of course, violates the procedure which has come to be regarded as of primary importance in political elections. The differences between Republicans and Democrats certainly are not more fundamental, and generally less so, than the differences between employers and employees, yet if the ballots in a regular election were counted by Republicans alone or by Democrats alone, that fact in itself would probably be sufficient to invalidate the election.

These are tendencies in the direction of company control. They grow out of the facts of the situation and sometimes are not due to deliberate planning. There are, however, certain representation plans where control is definitely provided for or where it is secured by definite acts on the part of the management. For example, it is provided in the constitution of one shop organization that its president is to be selected by the board of directors of the employing company. In another plan it is provided that the constitution cannot be changed without the consent of the board of directors. Under some plans men not approved by the company, particularly members of unions, have been discharged after being elected by their fellows as representatives.

Perhaps the most significant evidence of a tendency in the direction of deliberate control appears in private or semi-confidential statements that are sometimes made. In a meeting of employment executives and others interested in industrial relations, the director of personnel of a large employing concern advised his fellows to encourage the formation of apparently democratic organizations of

employees. "But, of course," he said, "never let these organizations get out from under your control. Let the employees think they are running them, but be sure always to keep it in hand." The supervisor of welfare work in another large institution once said to the writer, in speaking of the election of representatives, "Of course, we let the workers think that they are selecting their own representatives, but actually we select them."

There is, however, another tendency in shop-committee development. As stated in a previous chapter, there are company organizations set up by the management for the purpose of increasing rather than decreasing the ability of the employees to protect their own interests. Furthermore, it may well be asked whether the introduction of the shop-committee plan does not imply a real and significant change in industrial relations and increased power in the hands of the wage-earners, even where that was not the intent of the management.

Where it has the most limited application it still provides for workers unacquainted with collective bargaining what they never had before, an opportunity to approach the management through regular channels and to make known their desires. In some cases this may amount to no more than the right of petition; but even that, since a regular opportunity is provided for it, is a step in advance. Furthermore, such petitions are made orally by committees who have a sense of responsibility to the workers as a whole, and under circumstances that make discussion not only possible, but almost inevitable. Where the plan has been introduced in good faith, and there is a real desire on the part of the management to understand and to meet, so far as possible, the necessities of their employees, such an arrangement has many of the attributes

of true collective bargaining. Indeed, it is collective bargaining of a sort, but limited by the fact that the bargaining strength of the wage-earners is not as great as it would be if they were members of a union. Under such circumstances employees have the opportunity of becoming acquainted with the advantages of collective bargaining. It is altogether likely that as they have experience with it they will desire more rather than less bargaining power and that the organization of the committee has been for them a step upward. Some very interesting cases have come to the attention of the writer where under a shop-committe plan the workers have obtained for themselves substantial advantages that would have had no opportunity for consideration before the organization of the committees.

It should be pointed out also that shop committees have been organized under circumstances that may make possible the development of a bargaining strength on the part of the employees reasonably comparable to that enjoyed by members of trade-unions. When a shop-committee plan is put into operation by a large corporation with several plants, it must be recognized that the employees of a single plant are not cut off from all other organizations of workers, as may be the case where the corporation involved is the owner of but a single plant. It is possible for the committee in one plant of such a corporation to communicate with the representatives of the employees in other plants of the same corporation. It is possible for them to obtain information as to the practices prevailing over a wide area. By such communications there may be developed both moral and financial strength quite similar to that which is enjoyed by a local trade union, because of its affiliation with other unions.

It is true that as yet few strikes have emerged as a collective-bargaining weapon in the hands of company organizations; but the intercommunication between groups in different plants owned by the same corporation, the comparing of notes and consequent insistence on leveling up in all plants to the best standards prevailing in the corporation as a whole, are concrete developments that are to be observed in the shop organizations of some of the larger corporations.

If one were to speculate further on the possibilities of company organizations, he might wish to consider the fact that all of the employees of the plant are included, and that the basis for the organization is the industry rather than craft skill. If such organizations were to awaken to the possibilities of the situation, the employers might discover that they had by their own acts laid the basis for the development of industrial unionism, the very thing most eagerly sought by the left wing of the organized-labor movement.

PROFIT SHARING

Plans designed to supplement the wage-earner's income, such as profit sharing or arrangements for stock distribution, when wisely conceived, are bound to contribute directly to the welfare and happiness of the wage-earner. There seem to be sound reasons of economy and public policy for encouraging such plans. It is important, however, that they should be properly drawn up. If the benefits depend upon any other factor than efficient service, they are not likely to be equitable in operation or have satisfactory results. Mere presence of a name on the payroll ought to be evidence of the kind of efficient service

that is deserving of a share in the benefits, since the recourse of the management in the case of poor work is discharge.

It is a fact, however, that profit sharing and stock distribution plans are sometimes made use of to insure full managerial control. Profits may be withheld, for example, and not distributed on the basis of either actual earnings or of length of service, but on the basis of merit as interpreted by the board of directors or the superintendent. Wherever such a plan is in vogue the distribution is usually made on the basis of loyalty. The opportunity for favoritism here, and the inducement held out to the acquiescent employee, are obvious. Sometimes the plan involves the distribution of bonuses, the award of which depends upon securing the approval of the management.

The plan of the U. S. Steel Corporation is a case in point. The corporation sells stock to its employees each year at a rate somewhat below the market rate prevailing. Employees are allowed to pay for the shares in installments out of their earnings. While they are paying for the stock they receive the regular dividends, and in the case of preferred stock provision is made for the payment of a bonus of five dollars a share each year for the first five years. At the end of the five-year period, those who still own shares of stock come in for an extra bonus, which is made up out of the five-dollar payments which would have gone to other holders of stock had they not lapsed in their payments. Anyone purchasing a share of preferred stock, therefore, is entitled to the regular seven dollar dividend and in addition stands a chance of receiving twenty-five dollars in the first five years, plus an unknown sum at the end of that period. It represents

in every respect a fine investment, but the noteworthy thing here is that neither the extra dividends each year nor the bonus at the end of the five-year period goes to any holder of stock as a matter of right. These extra payments go only to those who are certified by their superintendent or foreman as being worthy of receiving such payments. The plan distinctly provides that loyalty to the corporation must be shown if any such payments are to be made.

The Brooklyn Edison Company has an interesting profit-sharing plan which has still greater restrictions. It provides that participation shall be entirely on the basis of merit. A committee representing the management will decide at the end of the year who is entitled to receive a share in the profits, and it may exclude any employee without giving any reason for such exclusion.

Even the Ford profit-sharing plan, as originally devised, laid the basis for increased employer control. The theory of the Ford plan was that a man was entitled to his wages if he worked at all, but he was entitled to profits only if he lived up to certain requirements laid down by the company as to standards of living and so on. The celebrated $5 a day plan was not a wage arrangement. For example, a man might be listed at thirty-four cents an hour; his wages for eight hours, therefore, would be $2.72. He would be entitled to enough more each day to make his total wage $5, if he met the requirements laid down. Such a man, actually receiving $5 a day, was therefore in receipt of $2.72 as wages and $2.28 as profits. The company guaranteed him his wages as long as he worked, but stood ready to deprive him of his profits at any time that it did not approve of his conduct. Many a

man was taken "off profits" as a disciplinary measure and allowed again to participate when he had met certain arbitrary requirements laid down.

INDUSTRIAL PENSIONS

Another project, admirable in itself, but which enables the employing corporation to exercise increased control, is the payment of pensions to superannuated employees. The purpose of the establishment of the pension plan is to enable the employees to anticipate economic security in their old age and to make possible the retirement of workers whose powers as they grow older begin to decline. Pension plans are often justified on the ground that they represent the payment of a deferred wage. This is an incorrect assumption unless the participant has actually been paid less than the going rate of wages. If he is paid the going rate and then receives a pension at the end of his working life, it is obvious that his wages have not been deferred and that he is receiving something in addition to wages.

The justification for the payment of a pension is that an employee contributes something of value to the concern which employs him, by remaining in its service for a considerable period of time. With such a man, then, the company makes two bargains: it offers him a wage for his day's work, and it offers him a pension as recompense for continuity of service. The peculiar thing about these two arrangements is that one of them, the wage bargain, constitutes a legal contract and will be enforced in the courts. The other is not a legal contract and cannot be enforced. It is this fact which makes it possible to utilize

a pension plan as a means of lessening the independence of employees. No rights are conferred by the offering of a pension plan. It does not give a man a right to hold his job, and yet this is what he must do if he is to have a try for the pension, for, naturally enough, no company offers a pension to a man simply because he is old; it is offered to those employees who have spent a long period of time in the service of the company, as a rule at least twenty years. The holding of the job is, therefore, essential to getting in line for the pension.

In the second place, the employee has no right to the pension even if he does remain in the employ of the company the allotted time.[1] Most of the plans provide specifically that the decision as to whether or not a pension is to be conferred is to be made in each case at the end of the allotted period, and if for any reason the employee has incurred the displeasure of the management, he can therefore be denied a pension. In the third place, he does not have an assured right to continue to receive the pension

[1] The following rule appears in the Pension Plan of Swift & Co., the Chicago packing house:

> "The establishment of this pension plan is intended only to declare the present policy of the Company and to give authority and instructions to the officers of the Company to carry out such policy, and neither the establishment of this plan nor the granting of a pension nor any other action now or hereafter taken by the Board, or by the officers of the Company, shall be held or construed to create a contract or to give to any officer, agent, or employee a right to be retained in the service, or any right to any pension allowance, and the Company expressly reserves, unaffected hereby, its right to discharge without liability, other than for salary or wages due and unpaid, any employee whenever the interest of the company may in its judgment so require."

even after payments have begun. A number of the pension plans make specific provision for this also.[1]

The effect of these restrictions is probably not very great so far as the younger employees are concerned. As a man grows older, however, he begins to think more about the disadvantages of old age. If he finds also that he has acquired a number of years' credit toward a pension, he will begin to regard the pension plan as a thing of value, increasing as he gets nearer to the age of retirement. Such a man must hesitate about taking any action that would injure his standing with the management. The effect of it must inevitably be in the direction of increased dependency and acquiescence.

The following news item, appearing in the New York *Times* of August 6, 1922, during the nation-wide strike of railway shopmen, throws some additional light on this point:

Next to the seniority issue, railway executives state that the matter of pensions has been the most positive force in working for loyalty in the present shopmen's strike, for all strikers lost their pension rights. The pension system of the Illinois Central Railroad, the third carrier in the country to establish a pension system for its employees, was cited by railway officials as a good example of the methods the carriers are utilizing in promoting the allegiance of workers.

"The Illinois Central's Pension Department has been in operation twenty-one years, and supervisory officials have been quoted as stating that it proved an invaluable instrument in holding old-time workers during the present strike.

[1] The U. S. Steel Corporation Pension Plan contains this rule:

"Pensions may be withheld or terminated in case of misconduct on the part of the beneficiaries or for other cause sufficient in the judgment of the board of trustees to warrant such action."

Up to date the road has paid out to pensioners a total of $2,456,000, and since the adoption of the plan 1,499 employees have been retired on pension.

All of these methods constitute an indirect attack on unionism. In some cases they are adopted without any thought of union opposition on the part of the employer. Desiring to fulfill his obligations, he offers the employees good conditions and pays them well, thereby earning their friendship. In other cases the employer consciously tries to wean his employees away from the unions by beating them at their own game; or he offers certain advantages the enjoyment of which is contingent upon their standing aside from the general current of the labor movement.

In both cases the tendency is to weaken the unions or retard their development. But the attack is indirect, because the issue is not clear-cut. It is a flank movement rather than an assault.

READING REFERENCES

BASSET, WM. R.: *When the Workmen Help You Manage,* chap. vi and ix.

BRANDEIS, LOUIS D.: *Business, a Profession.* (Chapter on "Industrial Pensions").

BURRITT AND OTHERS: *Profit Sharing; Its Principles and Practice.*

CARLTON, F. T.: *History and Problem of Organized Labor,* pp. 201-210.

COMMONS, JOHN R.: *Industrial Government,* chap. vi.

——— *Trade Unionism and Labor Problems;* chaps. xix, xx, xxiv.

DEROODE, ALBERT: "Pensions as Wages," in *American Economic Review,* June, 1913.

EMMET, BORIS: "Extent of Profit Sharing in the United

States; Its Bearing on Industrial Unrest," in *Journal of Political Economy*, vol. xxv, pp. 1019-1033, December, 1917.

JAMES, GORTON: "The Problem of the Old Man," *The Survey*, September 16, 1921, vol. xlvi, pp. 672-674.

——— "Baby Annuities," *The Survey*, vol. xlvi, pp. 705-707, September 24, 1921.

LEITCH, JOHN: *Man to Man.*

MYERS, JAMES: *Representative Government in Industry.*

NATIONAL CIVIC FEDERATION: *Profit Sharing by American Employers.*

National Industrial Conference Board: Research Reports Nos. 21 and 29.

ROWNTREE, B. S.: *The Human Factor in Business.*

STODDARD, WM. L.: *The Shop Committee.*

STUDENSKY, PAUL: Report of the New Jersey State Chamber of Commerce—"Broadening the Scope of Pensions in Private Industry."

TEAD, ORDWAY: *Course in Personnel Administration*, chap. xxix.

TEAD AND METCALF: *Personnel Administration*, chaps. xxviii—xxx.

U. S. Bureau of Labor Statistics: Bulletin No. 208.

WOLFE, A. B.: *Works Committees and Joint Industrial Councils.*

CHAPTER X

OPPOSITION TO UNIONS—DIRECT METHODS

THE late Frederick W. Whitridge, who was president of the Third Avenue Railway Company of New York City, was very outspoken in his opposition to unions. When some of the street-car employees came to him, asking him to recognize their union and to sign an agreement containing an arbitration clause, he refused abruptly. "When you ask me," he said to the committee, "in case of differences between any of you and the superintendent, to go to arbitration, it seems very much like my going to my cook and saying, 'I want beefsteak for dinner.' She says, 'You will get lamb chops.' I say, 'That won't do.' She says, 'We will arbitrate.' . . . If there is anything I can do to promote your welfare I will cheerfully do it, but I am manager of this company and you are my servants, as I am the servant of the company." [1]

It was a similar belief in the right of the employer to demand implicit and unquestioning obedience that led a group of manufacturers in Hartford, Connecticut, in September, 1918, to address a letter to the Secretary of War, protesting against a ruling of the War Labor Board designed to establish collective bargaining in the Smith & Wesson Factory at Springfield, Massachusetts. "Efficiency demands one-man power," they told the Secretary.

[1] "Minutes of a conference and correspondence in respect to the proposed strike by the employees of the Yonkers and Westchester Railways," October, 1912, pp. 15 and 16.

"The army in France is commanded by one man. You would not tolerate for a moment collective bargaining and soldiers' committees as to when and on what terms they would fight. . . . So in an industrial plant we know from long experience that the highest productivity can be procured only when the entire management is vested in a single responsible head." [1]

[1] The letter was signed by the executives of eighteen manufacturing establishments of Hartford, and was published in a Worcester, Mass., trade journal, "The Voter and His Employer," in its issue of September 28, 1918. The significant points in it were as follows:

> "As practical manufacturers of long experience, we believe the recommendation of the National War Labor Board that the Smith & Wesson Company introduce collective bargaining and shop committees to have been unwise. If maximum productivity is to be obtained, each individual employee must be dealt with as an individual and rewarded in proportion to his individual efficiency, and not on the basis of a class average, or in proportion to his organized ability to interrupt production if unwarranted demands are not granted. The whole history of union labor, both in this country and abroad, has proved that the open or non-union shop is far more efficient than the union shop, wherein collective bargaining and shop committees exist.
>
> "Efficiency demands one-man power. Your own department has recognized this. The army in France is commanded by one man. You would not tolerate for a moment collective bargaining and soldiers' committees in the army which should negotiate with the commander-in-chief as to when and on what terms they would fight. Russia tried that experiment. The Provost-Marshal-General does not ask for the appointment of committees of proposed registrants to consider when and on what terms they will register or how they shall be classified.
>
> "So in an industrial plant we know from long experience that the highest productivity can be procured only when the entire management is vested in a single responsible head with full authority to select his subordinates from the highest to the lowest in accordance with their individual fitness, and to reward each in accordance with his individual productivity."

Not every employer would be as frank as this, but the two statements quoted show how completely foreign to the thinking of some men is the idea of collective bargaining. "I do not want to be piggish," said Mr. Whitridge, "but my mind is shut." Given this point of view, it is not surprising that opposition to unions is direct as well as indirect, active and militant as well as passive. Indirect opposition is that offered by an employer when he establishes conditions that are designed to influence his employees to turn aside from unionism. Indirect opposition is a lure. It says to the workman, "Here is something better than the union." Direct opposition is active and aggressive. It says to the workman, "Join a union at your peril."

THREATS

The first weapon of the actively hostile employer who would destroy a union or prevent its growth is intimidation. When an organizing campaign is on, the men are carefully watched. Those who attend union meetings may be called in and warned that to continue to do so will mean discharge. In this way a union campaign is sometimes made ineffective.

United action of any sort is sometimes repressed even though there may be no thought of organization, apparently on the ground that such action is a dangerous tendency. In a large manufacturing establishment, one of the largest of its kind in the country, the men in one of the departments circulated a petition asking for an increase in wages. After getting a number of signatures they presented the petition to the superintendent. He refused to accept it, declaring that it was "contrary to the policy" of the company to receive petitions. He in-

formed the men also that they must erase their names from the petition, threatening them with discharge if they did not do so. Some of the men refused to erase their names, and these men were immediately paid off and discharged. Here there was no question of unionism. It was apparently a case of heading off joint action before it reached the point of unionism.

A similar occurrence took place a few years ago in another large manufacturing establishment, a steel plant in this case. The switchmen in the yards held a meeting and decided to ask for an increase in wages. At about the same time the company decided to grant an increase. They did not announce it, and the men had no means of knowing of the action taken, so the committee called on the superintendent to make known their desires in the matter. Instead of informing the committee of the decision already made, the superintendent felt that disciplinary action was called for. He discharged the committee, and for good measure followed that up by discharging all of the switchmen in the plant, and filled their places with new men.

Men who are active in bringing about an organization of their fellows are also subject to discharge. I once met in an Ohio town a steel worker from Gary, Indiana. He showed me his discharge slip from that plant, across the face of which was written the words, "union agitator." He told me that an incipient union movement was under way in his department, and he had been acting as temporary secretary. His activity had consisted solely in receiving membership dues and sending them to the national office.

It was very difficult to find out to what extent men

are discharged on account of union membership or activity. A union man discharged for inefficiency or genuine misconduct is apt to claim that he is being "victimized" for his union activity. Employers, on the other hand, are seldom willing to admit that they are discharging a man for this reason. It is easy enough to find other reasons—the man was "incompetent," or there was "no work" for him to do. Sometimes, too, action is postponed until the man can be caught in a technical or actual violation of a rule, when he will be dismissed as a punishment for his act. The hesitancy of employers to admit the practice was well illustrated in the attitude of a steel-company executive involved in the steel strike of 1919-20. He denied that men had been discharged on account of union activity. It happened that the writer had the names of some men who claimed to have lost their jobs in one of his own mills for that reason. On having his attention directed to this case, he said, "No, these men were not let go for joining the union. It was because they wrote a letter to the organizers, asking them to come here and start a union." [1]

The unions themselves, however, recognize very clearly the necessity of protecting their members from discrimination. They have even secured legislation forbidding the discharge of workers on account of union membership,[2] and it is undoubtedly true that one of the reasons for the demand for the closed shop is the protection it affords against this "victimization."

[1] Cf. Report of the Interchurch World Movement of the Steel Strike of 1919, pp. 197-244.

[2] Such legislation has been held unconstitutional by the U. S. Supreme Court.—Adair *vs.* United States, 208 U. S. 161.

INTERFERENCE WITH UNION CAMPAIGNS

One of the most common methods of obstruction in connection with union campaigns is interference with meetings. When union organizers announce a meeting in non-union territory, they can count with almost absolute certainty on the attendance of at least one class of workers. These are foremen, who are sent by their companies for the purpose of finding out who among their employees are in attendance. Often the foremen stand outside and write down the names of the men they know as they pass into the hall. Sometimes the presence of the foremen at the door is enough to make the meeting a failure, on account of the fear of the workers to pass by and be recognized. Open-air meetings have sometimes been startled by the taking of a flashlight photograph, the purpose of which is to make possible the identification of the persons in attendance. When by either method the names are secured, it is possible to bring pressure to bear that may nullify the efforts of the organizers.

A more drastic measure, possibly, is the action frequently taken designed to prevent organizers from securing the use of a hall or any building in which a meeting can be held. Sometimes through the influence of the employers concerned the owner of a hall may refuse to rent it for a union meeting. There are countless instances where, even after all arrangements had been made, owners have refunded the rental and canceled the engagement. The same end may be accomplished by action of the employing interests in securing control of all available meeting places.[1]

[1] "At various times and places, when the employees were attempting to organize, the company has hired or rented all the

Sometimes public officials interfere in one way or another. In Paterson, New Jersey, during the strike of silk workers in 1913, the police closed up all the halls of the city and the strikers had to march out of the city to hold a meeting. Strike meetings were prohibited by the police in various Massachusetts cities during the textile strike in 1919. During the steel strike of 1919 the sheriff of Allegheny County issued a proclamation forbidding an outdoor meeting of more than two persons anywhere in the county, and in many of the steel towns indoor meetings were prohibited. In Rankin, near Pittsburgh, a meeting of strikers was stopped by the Board of Health because of an alleged epidemic, while other meetings, presumably immune from germ attacks, were allowed to continue. Police and constabulary throughout western Pennsylvania were generally active in making it difficult for the strikers to get together. Some of the strikers near the Ohio line used to march over into that state to hold their meetings.[1]

The activity of the police is a subject to be discussed in Chapter XVII. It may be pointed out here, however, that the political influence of industrial corporations is frequently very great, so that mayors and police chiefs

available halls or meeting places to thwart them in their purpose. For instance, about the month of June, 1911, the employees attempted to hold meetings, but the company rented all the available halls and places where such meetings could be held in the towns of Altoona, Juniata, Tyrone, Bellwood, Hollidaysburg, Gallitzin, and Cresson, but a picnic place known as 'Sylvan Lodge' at or near Altoona was overlooked, and the company, upon discovering this, applied for a temporary injunction, which was granted, but eventually dissolved after a full hearing."—(Testimony of H. B. Perham, president of Order of Railway Telegraphers—U. S. Commission on Industrial Relations; Final Report and Testimony, vol. xi, p. 10078.)

[1] See article by S. Adele Shaw, "Closed Towns." *The Survey*, November 8, 1919, p. 58.

are not indifferent to it. Not only is this true, but persons directly interested in the industries of a locality are sometimes elected to office. It is very difficult for such a public official to be entirely impartial during an industrial controversy. For example, in 1918 there was a strike of machinists employed by the Bethlehem Steel Corporation at Bethlehem, Pennsylvania, and the National War Labor Board inquired into the controversy. In the summary by the secretary of the evidence taken appears this significant statement:

"The machinists were not permitted to hold a meeting in a hall. The owner of the hall had orders from the chief of police, who said, when questioned, that Mayor Archibald Johnson, vice-president of the company, was unfavorable to organized labor."[1]

That similar restrictions may be imposed even when the employer is not a public official is shown by the testimony of A. F. Diehl, general manager of the Duquesne works, Carnegie Steel Co., before the committee on labor of the U. S. Senate during the steel strike of 1919:

SENATOR STERLING: "Was Mr. Foster here prior to the strike?"

MR. DIEHL: "Yes. He was here trying to hold a meeting, but the meeting was not held."

THE CHAIRMAN: "What happened to the meeting?"

MR. DIEHL: "Well, we simply prohibited it." [2]

Where other tactics fail and the issue is critical, opposition to union campaigns has sometimes taken the extreme form of the forcible removal of the strike leaders by securing warrants for their arrest, or by mob violence. This is a form of opposition that is sometimes condoned, curiously enough, by persons professing to speak and act in the name of "law and order." It is mentioned here as

[1] From typewritten data consulted originally in the offices of the National War Labor Board.

[2] Committee Hearings, Part 2, p. 508, October 10, 1919.

a part of the tactics of opposition to unionism, but it will receive further attention in Chapters XII and XIII.

INDIVIDUAL CONTRACTS

The individual contract as a means of keeping a working force from joining a union has been in use to a greater or less extent for a good many years. An individual contract is one entered into between the employer and the individual workman. As a matter of fact, such a contract always is in effect, expressly or by implication, wherever the employment relationship exists and whether there is collective bargaining or not. The term "individual contract" is generally used, however, to describe a formal contract, usually written and signed by both parties, and having as its purpose the definite exclusion of collective bargaining.

The mere existence of such formal contracts may be sufficient to prevent the signers from joining a union. If they are time contracts the signers cannot strike during the term covered without violating their obligations. The contracts may be so drawn as to expire at different periods, thus arranging matters so that only a handful of men at any given time may be free to strike. Such an arrangement will undoubtedly operate both to discourage the growth of unionism and to lessen the effectiveness of any union already existing in the industry in question.

The more usual form of individual contract, however, is one in which the wage-earner declares that he is not a member of a union and agrees that he will not join a union while in the employ of the other party to the contract. Contracts such as this have been entered into occasionally for a good many years, but it is within the last decade that they have come into more common use, especially in the non-union coal-mining sections, where they are commonly known among the union miners as "yellow dog" contracts. The text of one such contract was printed in the *United Mine Workers Journal* for August 1, 1921.

It was said to be in use by the Imperial Smokeless Coal Co. of West Virginia. After setting forth that the company will on December 24th of each year pay a bonus to the miner based on the amount of his earnings during the past year, provided he has been in the employ of the company at least six months, the contract continues as follows:

For and in consideration of the above payment to be made and the promises and agreements herein, the party of the second part agrees to work diligently and continuously for the company and to protect the property of the company from injury and destruction as far as is consistent with personal safety; and the party of the second part further agrees that if any difference or dissatisfaction arises between himself and the company from any cause to adjust any and all such differences with the superintendent of the company, if that be possible; but if the parties hereto fail to adjust such differences, then the party of the second part agrees to peaceably leave the employ and vacate the premises of the company within a period of five days from the date of the arising of such differences.

In further consideration of the premises, the said company agrees to operate its said mines as non-union mines, and the second party agrees not to become a member of the United Mine Workers of America or any of its affiliated organizations, or to directly engage in, aid, or abet the unionization or attempted unionization of such mines, and a violation of this covenant by him shall terminate his employment with the company; but nothing herein contained shall be construed as intending to prevent or hinder the second party from terminating such employment, and after so doing and vacating the premises of said company to join or become a member of the aforesaid organization or any lawful body.[1]

The possibilities of such a contract were impressed upon non-union employers in 1917 through a decision of the Supreme Court of the United States in a West Virginia

[1] See also Lane, *Civil War in West Virginia*, chap. ix, "'Yellow Dog' Contracts."

case [1] involving the right of the union to continue its organizing activities among employees who had signed the contract. The court held that the union had no such right. Since this decision there has been a great awakening of interest in the individual contract. All over the country employers have turned to it as a weapon against unionism, and many injunctions have been secured based on the Hitchman decision.[2]

The advantages which are now to be gained by the individual contract are suggested in the advice given to its members by the League for Industrial Rights, an organization of employers, formerly known as the American Anti-Boycott Association, which maintains a legal bureau in New York. In a pamphlet issued by the League attorneys it is said that "reasonable and fair contracts may yet prove the most effective defense against the dangers of the closed-shop propaganda and sudden disruption of the working force, for *they create new property rights entitled to legal protection against the interference of outsiders.*" [3]

The League attorneys advise entering into two classes of contracts, one with employees and the other with competing employers, the purpose of both being the maintenance of the "open shop." [4] The value of these contracts is that they set up definite contractual relations, any interference with which is illegal and may be enjoined. The attorneys point out that the contracts will be effective in making illegal what was formerly not only legal, but "innocent and proper," for

"Every step taken by a union or any outsider to accomplish the unlawful purpose of inducing a breach of contract

[1] Hitchman Coal and Coke Co. *vs.* Mitchell, 245 U. S. 232.

[2] This case is discussed more fully in chap. xvi.

[3] Italics mine.

[4] It is noteworthy that the League attorneys are opposed to anti-union contracts. The contracts which they favor will have the effect, however, of rendering unionism wholly ineffective, and the theoretical right to join a union utterly without value to the worker.

is unlawful, although under other circumstances the same step might be innocent and proper. Threats of strikes, persuasion of employees, peaceful picketing, and payment of strike benefits, though frequently held lawful, become illegal if they are steps to induce the employee to quit work or an employer to operate a closed shop in violation of agreement."

Several alternative contract forms are proposed by the League. It is suggested that a legal contract with the employee does not necessarily require his signature, but may be effected by posting it on a bulletin board or putting a copy in the pay envelope. If the employee does not protest it is assumed that he has accepted the terms. His failure to protest thus makes him liable to an injunction with its attendant punishment for contempt if he ever suggests to his fellow employees that they join a union. The League suggests also that enjoyment of profit sharing or other benefit features should be made contingent not alone on services rendered, but on refraining from the strike as well.

The second form of contract proposed by the League is between competing employers and constitutes an agreement to maintain the "open shop." The advantage of such a contract lies in the fact that each party will have a property interest in having the open-shop agreement maintained by every other party subscribing to it. Any subscriber to the agreement may then secure an injunction against a union endeavoring to secure recognition even if the attempt is against some other manufacturer who is a party to the contract.[1]

[1] The statement of the League attorneys concerning the effect of these contracts is as follows:

> "In drafting an agreement with employees, the problem is complicated and the scope of discretion very broad. There are times when to present such an

THE SPY SYSTEM

From all that has been presented so far in this chapter, it is evident that many employers have unusual means of obtaining information about their employees. Sending foremen to union meetings for the purpose of finding out

> agreement might foment trouble, so that the employer must be careful to seize the right opportunity. In some cases it may be advisable at the outset to confine such contracts to a selected list of the better class of employees. Agreements with employees need not be subscribed by them if they are properly called to the employee's attention, either through posting or by placing in the pay envelope. Employees who continue in service after the agreements are called to their attention are bound thereby. All rights to profit sharing, benefit systems, bonuses, etc., should be included in the agreement, and their enjoyment thus made dependent on the employee's willingness to so stabilize the working organization. The agreement has a twofold value: In the first place, it furnishes the employee who desires to continue at work an excuse which he may offer the agitator for refusing to strike. On the other hand, it broadens the employer's right to protection in most of our courts, so that he may enjoin even peaceful and persuasive acts on the part of outsiders to induce the employees to strike in violation of their agreement.
>
> "In drafting agreements the right of an employer at his option to treat the contract as still existing after the men have struck may be stated, so that picketing, payment of strike benefits, etc., to keep the men from returning to work may be enjoined.
>
> "Agreements between competing employers to operate an open shop, being in furtherance of industrial liberty, are legal and enforceable and entitled to protection from outside interference, like all other proper agreements. Each employer subscribing thereto secures a property interest in having the other subscribers adhere to the open-shop régime, and if the union knowingly threatens a strike to enforce the closed shop in violation of the agreement, either the manufacturer threatened or the other subscribers to the agreement may secure an injunction. In drafting such an agreement, the main consideration is a legitimate community of interest between

who are in attendance is an open and direct method. There is also widespread use of methods that are secret and indirect. These may be characterized briefly and accurately by the term "spy system."

In the nature of the case it is difficult to obtain any dependable information as to the extent to which spies are used in industry. A sufficient amount of evidence does exist, however, to suggest that the ramifications of the spy system are very great. Without any thought of looking for it I have stumbled upon some sort of evidence of its use in very nearly every industrial community with which I have any familiarity.

It is not altogether surprising that some means should exist by which the management generally is kept informed of what is going on. An embryo spy system is apt to crop up automatically, whether the employer desires it or not, because of the existence in every industry of men who are known by their fellows as "company men," who are natural tale-bearers. They go into the office to tell what they have heard their fellow workers say, and report on what has been done, in the hope of gaining favor with the management and thus winning some sort of reward in the form of promotion or other preferred treatment.

> subscribing manufacturers, either in the market for labor or the market for the sale of their goods, which will justify the agreement and make its object proper and praiseworthy. In the tentative form prepared by us, particular attention has been given to this problem in the recitals with which the contract commences. The covenants may be modified to suit special circumstances and clauses relative to the damages which may be recovered from a manufacturer who violates his agreement may be amplified and strengthened by a provision for the deposit of notes or cash in escrow."—League for Industrial Rights. Pamphlet entitled "Contracts to Protect the Open Shop and Minimize Strikes."

In this way the possible advantages of having a more organized method of obtaining information suggests itself. The tendency then is not for the employer to sit back and wait for information to come in of itself, but to encourage it and offer rewards for such work, either in money or in favor.

The next step is to hire men from the outside and to place them in the plant in a strategic way for the purpose of observing and knowing what is going on. These men are expected to report chance conversations in which a man may express himself on unionism or collective bargaining, and, where there is a union, to attend its meetings. The extreme of this method is reached when the employer turns the whole matter over to a detective agency, which places operatives in the plant to report, not to the employer, but to the agency.

There is no lack of indications that this sort of thing is going on. The advertisements of detective agencies specializing in industrial spying and in private guard service give a veiled clew to the practice. For example, Daugherty's Detective Bureau of New York City advertises "consultation and advice free on the following: Investigations—Surveillance—Railroad Work—Industrial Plant Observations—Mercantile Reports." The Cosgrove Detective Agency of Newark mentions among its services "Expert Secret Service, Industrial Efficiency, Civil and Criminal Investigations, Labor Replacement with the better type of workers for all industrial transportation and Marine Labor Difficulties." Dominick G. Riley of New York specializes in "Expert Secret Service, Labor Difficulties, Civil and Criminal Investigations, Surveillance."

In addition to seven detective agencies advertising in a recent issue of the New York *Classified Telephone*

Directory that they do industrial work, the following names were listed under the heading "Detective Agencies":

Foster's Industrial and Detective Bureau
Industrial and Railway Service Agency
Manufacturers' Confidential Service
Pioneer Industrial Service
Vickery Industrial Service, Inc.

Confidential letters sent out to employers sometimes fall into the hands of union officials and are published in the labor or radical press. Sometimes these letters are passed on by friendly employers; sometimes, doubtless, they are secured by a union spy system. One such letter sent out by a prominent detective agency just before a convention of the American Federation of Labor announced that two of their operatives were delegates to the convention and so would be in a position to tell what occurred in the committee rooms as well as in the open convention.

A circular sent out some time ago by a detective agency asserted that

wherever our system has been in operation for a reasonable length of time, considering the purposes to be accomplished, the result has been that union membership has not increased, if our spies wished otherwise. In many cases local union charters have been returned without publicity, and a number of local unions have been disbanded . . . We find the best way to control labor organizations is to lead and not force them . . . We help eliminate the agitator and organizer quietly with little or no friction, and further, through the employment of our spotters, you will know at all times who among your employees are loyal and are to be depended upon.

A firm apparently engaged in this sort of business under the name of "American Employers' Open Shop Association," with headquarters in Chicago, sent out a letter to manufacturers offering to "handle the situation" if a labor controversy were to develop. "Should you want an under-cover man on the inside among your employees," the letter went on, "we will also furnish you such a man, and you will receive a daily report on what is going on. In the event of trouble we will replace any men that may strike against you." [1]

An interesting editorial appeared some years ago in an Illinois publication representing the interests of manufacturers of that state. Under the heading "It Pays to Shadow Employees" the editorial said, in part:

> In any factory the operative working under cover as one of the employees turns in a world of information of the utmost value to the owners, who are able to anticipate labor difficulties, send to the scrap pile the clock watchers, time killers, and inefficient; reports wastes and sometimes thefts, and thus increases efficiency and reduces the cost of production. This phase of the detective business has made it necessary for many agencies to install a special Industrial Service Department.[2]

Further evidence of the existence of a spy system appears in the testimony of W. W. Atterbury, then vice-president of the Pennsylvania Railroad, given before the U. S. Commission on Industrial Relations in 1915. "The business of a railroad officer," said Mr. Atterbury, "is to know in advance what is going to happen, and we keep ourselves very thoroughly posted as to what is going on. We have a very efficient police organization, and we know

[1] New York *Evening Post*, December 20, 1920.
[2] *Manufacturers' News*, January 18, 1917.

in advance everything that is going on just exactly as the organizations themselves know what is going on with us. We have emissaries in our ranks just as the organizations have emissaries in their ranks." [1] Mr. Atterbury made it clear that the secret-service men are employed in the regular capacity as railroad employees and are paid the regular scale for their work as railway men and something in addition for their secret service work.[2]

A member of the Order of Railway Conductors furnished the Commission with a letter which he had received, in which the writer said he would "add $100 to your monthly income." In explaining the nature of the work required the letter went on:

"What I want is a daily letter from you (not every other day) regarding the affairs of your organization; that is to say, a complete report of everything within and without the organization, including, of course, the minutes, etc., of the meetings, special and regular. You will find this the easiest money you ever earned in your life and absolutely without the knowledge of anyone except yourself and one other. You are not required to sign your name to letters—only number 500—and mail your reports or letters as you will later be instructed to do in case you accept the trust. . . . I wish to further explain for your benefit that the object of getting this advance information is to add to a service intended to be exercised in furtherance of the amicable adjustment or settlement of labor difficulties and strikes, and as much as possible the avoidance of them. It is believed by advance thinkers on the subject that a good work can be accomplished and organized labor greatly benefited, and to that end the information will be directed, especially within

[1] U. S. Commission on Industrial Relations, Final Report and Testimony, vol. xi, p. 10130.
[2] *Ibid.*, p. 10134.

the ranks of organizations with which we are already doing business." [1]

PURPOSES OF THE SPY SYSTEM

One purpose of industrial spying is, of course, to prevent unions from getting started and to prevent independent or collective action of any sort. If the union movement can be nipped in the bud that is better than fighting it later on. An ounce of prevention is worth a pound of cure. When the leaders of an incipient union movement are identified, it is possible to get rid of them and thus the movement is stopped before it gets fairly started.[2]

After a union is organized, a spy system is often considered even more necessary. It is easier to operate, too, because there is now a definite place of meeting and a time when things will be talked over and plans made. It is a simpler proposition to get a man into a union and let him appear at union meetings, as the others do, than

[1] U. S. Commission on Industrial Relations, Final Report and Testimony, vol. xi, p. 10449.

[2] The following, from testimony given by Vice-President Atterbury of the Pennsylvania Railroad before the Industrial Relations Commission, throws light upon this point:

Commissioner Weinstock. "The second charge is that the Pennsylvania Railroad Company makes a practice of discharging men for the reason that they have joined a labor organization; also that it coerces and intimidates men who are suspected of having joined a labor organization and habitually discriminates against men who endeavor to exercise their right to organize."

Mr. Atterbury. "In a measure that is correct in this way: If we have knowledge—and, as I explained before, it is our business to have knowledge of just those things—that an organization is already in existence which emphasizes the practice of things that we object to or attempts to organize on our lines, we take steps to prevent it."—(Vol. xi, p. 10136.)

it is to give him a commission to go among a thousand men to find out what they are doing. The advantage of such an arrangement is indicated by a story told the writer some years ago by a trade-union official living in Martin's Ferry, Ohio.

Across the Ohio River from Martin's Ferry is the city of Wheeling, West Virginia, and in Wheeling lived an official of a well-known anti-union corporation. The union officer and the company manager were quite friendly with each other in their personal relations, and the latter, the union man said, used to twit the other about the ease with which he was able to keep track of things. He seemed to know what the union was going to do before the union did. On one occasion there was a meeting of union officials in Youngstown, Ohio, to consider a wage scale for the district. The man from Martin's Ferry was ill at the time, and did not attend the meeting. He had an arrangement with the men who did attend, however, that they were to call him on the telephone as soon as possible and inform him of the action taken. On the day in question, before he had had any word from his own men, he was called to the telephone. The man on the other end of the wire proved to be the company official in Wheeling, who asked him if he would like to know what his union had done about the new scale. The manager then gave him, in detail, the wage scale agreed upon by the union officers, and just how the vote went on each item. A half hour later, the telephone rang again. This time his union brother was on the wire, and the information given by the manager was confirmed in every detail.

How a detective agency sometimes works when called in to defeat strikes or break up unions is revealed in a book published a few years ago by Sherman Service, Inc.,

an agency having offices in ten cities in the United States and Canada. This book was printed for circulation among employers in order to stimulate business for Sherman Service, and outwardly it has the appearance of a movement to promote harmony and good will in industry. *Industry, Society, and the Human Element* is the reassuring title, but the subtitle reads, "A Few Detective Stories that are Interesting and Instructive." The purpose of the book, to quote the exact words of the preface, is "to state from a strict practical standpoint what may be done to stop unrest in the industrial, social, and moral life of any organization. The illustrations given are truthful occurrences." The methods used by this organization in their work of stopping unrest are clearly revealed in the illustrative cases given. One of them may be taken as a sample.

There had been a strike in the plant of "one of the very largest companies in the East." Sherman Service was called in and soon succeeded in getting the men back to work. It appeared that

> before our operative's arrival the strikers had formed a union which was affiliated with an organization of anarchistic tendencies. The company was determined to exterminate this body, but were unable to do so at the time. We were given full authority to act and told to follow our own methods in breaking up the union.

Accordingly, two Italian operatives and one Polish operative were sent to the scene of action,

> one to cultivate the secretary of the union, who was a very violent anarchist; one to cultivate an Italian employee who had a great amount of influence over his fellow countrymen . . . while the Polish operative was to cultivate the Polish

president of the union. Unknown to each other in any way the three secured positions in the plant, conducting themselves as ordinary laborers, living with their respective countrymen.

In a short time these operatives were "successful in splitting the union into three factions—one controlled by the committee, one by a Polish leader, and one by the president." The secretary of the union was brought into an attitude of hostility to the other factions, and a meeting which was held to compose differences "resulted in a general fight." The secretary, however, got control, and succeeded in having a new strike called. Then Sherman Service gathered its resources, having been told "to see the whole matter through to a finish."

We detailed a number of guards under the command of recognized officers from our regular staff, and they were immediately deputized and kept the strikers from congregating in the vicinity of the mill. Ejectment papers were served upon the committee who were from another town, and they were ordered to leave town, which they did. Our secret operatives in the meantime were using such arguments as would tend to cause further dissension in the ranks.

As a result of all this the strike came to an end within eight days.

One of the characteristic activities of this organization appears to be the playing off of one nationality against another. In another case described the principal nationalities were Poles and Italians. In this case "as 'a house divided against itself cannot stand,' we arranged to have the Italians hold secret meetings independent of other nationalities employed." This made the Poles very suspicious and they began to assault the Italians; their hostility to them being further inflamed by stories cir-

culated by the Polish operative that the Italians were going back to work. The Polish operative then succeeded in having a separate meeting of Polish strikers called to consider ending the strike. At this meeting it was decided to postpone a decision until they could find out what the Italians were going to do. Despite this fact "our operatives, acting upon instructions from their superiors, advised the general organizer and the other delegates that the meeting of the Poles had already taken place and that they had made certain threats to assault the labor leaders if they continued to keep them on strike." The organizer, therefore, believing that things were slipping out of his hands and, wishing to retain his leadership, advised the workers all to go back to work.

A further comment in the report is as follows: "Had this client heeded our advice and continued the use of our competent operatives, he would have without the least question of doubt been successful in counteracting any movement made by labor leaders; he would have known the names of agitators, where meetings were held, the number of (and?) names of employees interested in the movement, the amount of money paid into the union and by whom, and, by allowing Sherman Service to act as an insurance upon its production, he would have had no loss from shutdown, no worries as to what he should personally do or could try, and our operatives would have been able to follow instructions and mingle with the workers in such a way that they would have easily been made to see the futility of allowing labor agitators to have a pleasant life at their expense."

The book containing these "interesting and instructive" detective stories was put out in 1917, and is said to have been recalled, in so far as that was possible, shortly after-

ward. That the organization continued to follow these tactics was indicated by instructions sent out to its operatives in South Chicago during the steel strike in 1919, a copy of which was obtained during a police raid upon its Chicago offices during that year. The instructions read as follows:

DEAR SIR:

We have talked to you and instructed you. We want you to stir up as much bad feeling as you possibly can between the Serbians and Italians. Spread data among the Serbians that the Italians are going back to work. Call up every question you can in reference to racial hatred between these two nationalities; make them realize to the fullest extent that far better results would be accomplished if they will go back to work. Urge them to go back to work or the Italians will get their jobs.[1]

In the early part of 1924 Sherman Service was still actively advertising in the metropolitan papers, using the slogan, "The viewpoint of the employee is the most neglected asset in industry."

Earlier in this chapter reference was made to the use of spies by unions as well as by employers. Vice-President Atterbury of the Pennsylvania Railroad, in his testimony before the Industrial Relations Commission, quoted on page 176 directly charged that the railway unions use spies just as the railway companies do. A. B. Garretson, then president of the Order of Railway Conductors, who, as a member of the Commission, heard Mr. Atterbury's testimony, let the statement pass without comment.

It is altogether likely that the unions are in the spy business, but it is highly improbable that they are in it

[1] Report of Interchurch World Movement on the Steel Strike of 1919, p. 230. (See pages 221-239 of this report for a further discussion of espionage.)

to the same extent that the employers are. Their funds available for such purposes are not so great, for one thing. The more important reason, however, is probably the fact that the employers' moves are more difficult to check up than are those of the workers. Employers are not as numerous as employees, and plans are not talked over by so large a group of people. Meetings of executives could hardly include an emissary of the union. While an occasional office worker may be engaged to secure carbon copies of letters or other documents and turn them over to the union, there is little evidence that this is done on a large scale. It may safely be assumed, however, that the principal reasons for the lesser activity of the unions in this field are those given here, and not the existence of a generally higher ethical level among the unions. There are individuals in both camps who would not soil their hands with such methods, but wherever the relations between the union and the employers are such as to approach a state of war, undoubtedly the majority on both sides would justify the tactics of war.

EFFECTS OF A SPY SYSTEM

A spy service such as has been described has a marked effect on the morale of a community. Everywhere it creates an atmosphere of uncertainty and suspicion, particularly where the workers are unorganized. People do not know whom they can trust. They are suspicious not only of strangers, but also of friends. The next-door neighbor may be reporting what they have said. An innocently critical remark; an expression of regret or of lack of confidence in a superior officer; a casual suggestion concerning the labor policy of the company—all may be

reported immediately to some one in authority. The effect of this state of affairs is that men are cautious and their feelings repressed.

Such an atmosphere was plainly in evidence in Homestead, Pennsylvania, at the time of the Pittsburgh Survey in 1908, in which the writer participated. It was possible to induce a man to talk freely only in his own home with the door shut. It was all right to talk on the street corner about general community affairs that no one intended to do anything about. You could meet a man and talk about the street-car service, baseball, or the price of beefsteak, but if you so much as mentioned the steel company, that ended the conversation. I remember going down the street one day and overtaking a workman on his way to the steel mill. I did not know him, but we were going the same way, and as we went along we talked about various things of minor importance. It happened that there had been a reduction in wages in the steel plant and everyone was talking about it in his home. I remarked, "That was quite a cut the boys got last week." Instantly the man's expression changed. His reaction was not only mental; it was physical. He stepped away from me and said, suspiciously, "I haven't heard of any cut." Yet it was the event of the year and the main topic of indoor conversation in the whole town.

Where there is a union the value of the spy system is different. It is more difficult to take advantage of the knowledge obtained, but it is easier to get the knowledge. And it is of great value to the employer to have that knowledge in advance. To know in advance that the men are going to make a proposal for an increase in wages or reduction of hours is important, and it is still more important to know in advance when a strike is being

planned. The employer thus fortified can have his arguments ready or he can lay his plans for breaking the strike.

What industrial spying really signifies is admirably set forth by Sidney Howard in his interesting and valuable report on this subject:[1]

"We find that it puts both employer and employee at the mercy of a power which is, at best, unscrupulous; that it lays labor open to corruption, misleads capital into folly, injustice, and often actual crime; that it creates, wherever it appears, a turmoil of unrest and rage; and that it is at the very heart of labor violence. Industrial spies, many of whom would commit a murder for two dollars, are undeniably the seeing eyes of more than one honorable American employer."

READING REFERENCES

BONNETT, C. E.: *Employers' Associations in the United States.*

BROOKS, J. G.: *Labor's Challenge to the Social Order,* chap. v.

BUDENZ, LOUIS: "Operative 03—Exposé of a Labor Spy," *Labor Age,* December, 1923.

FITCH, JOHN A.: *The Steel Workers.*

HOXIE R. F.: *Trade Unionism in the United States,* chap. viii, "Employers' Associations."

Interchurch World Movement, Commission of Inquiry. Report on the Steel Strike of 1919.

LANE, WINTHROP D.: *Civil War in West Virginia.*

U. S. Commission on Industrial Relations, Final Report and Testimony, vol. xi, pp. 10069—10449.

[1] *The Labor Spy.*—Reprinted from the *New Republic,* 1921. Articles appearing originally in the issues of April 7, 14, 21, 28, 1920.

CHAPTER XI

COMPANY TOWNS

THE story of direct and aggressive opposition to unions is not complete without a reference to the isolated industrial community. The great majority of industrial enterprises are carried on in centers where many other interests are also represented. The isolated industrial community is not, therefore, in any sense typical; but the number of such communities and the persons employed in them are in the aggregate very large. In addition, their conditions are such that it is possible to use in them all the tactics of opposition to unions mentioned in the preceding chapter, and with an effectiveness that is far beyond that possible in industry generally. In the isolated industrial community, therefore, we often find an opposition to unionism that is direct and intense.

It is possible to distinguish at least three types of industrial communities. A plant may be located in the midst of a great city, drawing its employees from the four corners of the metropolis, its managers having no knowledge of or responsibility for their manner of living or their home surroundings. The workers appear in the morning at the appointed time, and at night are swallowed up in the swarming population of the city and lost from view. In such a case they are cut off from all connection with their employer the moment they board trolley car or train for home. Thus a sharp and distinct separation

is made of their functions as employees from their functions as citizens.

Another plant may be outside the city, in a smaller incorporated town, like the steel towns in the Monongahela Valley, near Pittsburgh. In these towns the steel mill is the most important enterprise, but a large number of smaller manufacturing establishments are also present, and there is a considerable retail and general business section. Here the employees of the steel company are much closer to their employer, so far as living conditions are concerned. They live in the same town as the plant. There is not the same break between wage-earner and citizen as in the great city. It is possible in such a town for the employer to exercise a considerable degree of control over community affairs, but his control is not absolute.

The community where control may be exercised in the highest degree is the more isolated town with a single dominating industry. Everyone in town is dependent directly or indirectly on the one industry or even upon one factory for a livelihood. If the employing company owns the houses in which the people live, if it owns all the land, if in other words the town is a company town, the opportunity for interference in the lives and habits of the people is tremendously increased. In such a town the employees do not get away from company influence, as do workers in a city. When they quit for the night, they pass from the status of wage-earner to that of tenant, the same person, natural or corporate, occupying alternately the position of landlord and that of employer. The wage-earner is always on company property, whether at work, at home, on the street, or in the store; often even when he is at church.

In almost any industry it is possible to find one or more company-owned towns. Many of them are old, having been established early in the history of the American factory system by some enterprising *entrepreneur* who, with his family, lived in the town as the "squire" and leading citizen of the community. The owning and reigning families have long since departed to the neighboring cities and these towns are now controlled by absentee owners through a resident manager.

The company town of to-day comes into being generally on account of the existence, at an isolated point, of raw materials, or of power, or of transportation facilities, such as river, canal, or lake. Such a town comes into being logically enough. Take coal mining, for example. A coal operator cannot, like a man opening a factory, set up his business wherever he finds it most convenient. He has to find out where the coal is and then make as favorable arrangements for getting it out as possible. More often than not coal is discovered in places fairly remote and difficult of access, as in mountainous regions. The would-be coal operator must first get possession of the land under which the coal lies. Then he must build houses on it, for he cannot dig coal without miners, and they must have dwellings. After the houses are built some one must establish a store where groceries, clothes, and other provisions may be secured. Since the enterprise is not yet established, independent capital cannot be depended on to do this. The operator, having become landlord, generally turns merchant as well. There is usually need of educational facilities and opportunities for worship. The operator often finds it necessary to build both schoolhouse and church.

Thus, in the most natural way in the world, the coal

operator finds himself the owner of a town. The houses are his, the land both within the camp and around it, the public buildings, the streets, and the sidewalks, all are the private property of the operating company. All this must come about, as a rule, whether any ulterior purpose is present or not. Having come about, however, and whether planned for or not, the operator finds himself possessed of a large degree of power.

CONTROL IN A COMPANY TOWN

The most important thing about the possession of this power, from the standpoint of the present discussion, is that it makes possible a degree of control over the activities of the workers that is not possible in any other kind of community. The possession of such power comes about naturally; once it is possessed, however, it is very frequently used to prevent the growth of collective bargaining in any form. In the furtherance of this objective it often happens that the community becomes a little oligarchy, everyone within its confines, whether employees or not, coming under the suzerainty of the company manager.

This is possible because there is generally no town or village government in the accepted sense. The community is politically unorganized and without any local government of its own. Since the property belongs altogether to the company, the company rules. The maximum of control is reached in what are known in mining regions as "closed" camps. The closed camp is one in which the public has no rights and is so situated as to make possible the exclusion of anyone considered undesirable. A news dispatch to the *New York Times* (April 16, 1922), from

a mining town in West Virginia, described the situation there as follows:

The miners are entirely dependent upon the coal companies, however, for their existence. No one owns his own house; nor can he acquire property. He must buy his groceries and clothing at a company-owned store and amuse himself at a company-owned theater, unless he tramps many miles to the nearest town. The company owns all the land and everything upon it, and therefore controls the lives and activities of the community. It also in many instances owns the roads, so that it controls ingress and egress.

One of the ways in which the coal companies make use of this power was made clear in the same dispatch:

Superintendents of the mining camps asserted they had driven out all the red necks or union agitators they had discovered, and that no time would be lost in evicting miners displaying union sympathies, as the operators did not purpose to let the union get a foothold.

That this control exists in other mining regions, and that similar use is made of it, are indicated by a statement of counsel for the coal operators quoted in an opinion of the Supreme Court of Colorado:

Of the eight "closed camps" it appears that practically the same conditions existed in all of them, and those conditions were in general that members of the United Mine Workers of America, their organizers or agitators, were prevented from coming into the camps, so far as it was possible to keep them out, and to this end guards were stationed about them.[1]

These "closed" camps are often located in mountain canyons, accessible by one road running through company property, the road itself owned by the company. It is

[1] Neelley *vs.* Farr, 61 Colo. 485. Quotation at p. 495.

often the practice to place a man at the entrance to the camp for the purpose of excluding anyone not sufficiently accredited. To be sure of being allowed to visit such a camp one should secure a pass, issued generally by company officials, sometimes procurable from local politicians. Sometimes an employee in one camp is obliged to secure a pass if he wishes to visit a friend in another. In the *United Mine Workers Journal* of July 15, 1922, there is a photographic reproduction of a pass issued by the Buckeye Coal Co. of Pennsylvannia to Frank Veccano, said to be one of its employees, giving him permission to visit a neighboring camp. The pass was good only "from 5 P.M., June 4, 1922, to June 6, 1922."

The man on guard is known as the "camp marshal." He is hired by the company to protect its interests, and he is almost invariably a deputy sheriff, so he is peace officer as well as watchman. Since he draws his salary from the company, he takes orders from them.[1]

The status of the closed camp as a private preserve is sometimes provided for in the leasing of the houses. The United States Coal Commission, in its report on civil liberties in the coal camps, cites a lease in use in Fayette County, Pennsylvania, which provides that the road leading into the camp is to be used only by the lessee and his family, and he agrees not to invite into the camp "any person or persons whomsoever . . . except physicians attending the lessee and his family; teamsters or draymen moving lessee and his family belongings into said premises or away from the same; and undertakers with hearse, car-

[1] For a clear and enlightening discussion of the operation of this system in West Virginia, see Lane, *Civil War in West Virginia*, chap. vii, "Deputy Sheriffs in the Pay of Operators," and chap. viii, "How the Deputy Sheriffs Earn Their Money."

riages and drivers, and friends, in case of death of the lessee or any member of his family."[1]

David J. Saposs, who made a study of industrial towns for the United States Commission on Industrial Relations, described the situation as follows:

Invariably the corporation owns all the land within a radius of a mile or more around the plant, depending on the amount necessary to maintain absolute control of everyone and everything directly or indirectly connected with its operation. In most of the towns the corporation owns all the buildings, such as dwellings, school-house, churches, stores, etc. With two exceptions the residence sections or the quarters inhabited by the employees are fenced in and regarded as private property; the corporation controlling all access to the quarters, whether it be for social or business purposes. Many of the corporations also control or operate the hotels, stores, and banks. One company owns and operates every business in the town, except the barber shop, of which it owns the ground and building in which the shop is located . . . As all the inhabitants are economically and territorially dependent upon the corporation every vital activity in the community can be dominated by it. No individual or institution of any consequence escapes, not even the church. The people have little, if any, voice in the usual social, religious, and public affairs of the community. Even those merchants not on company ground, but who are tributary to that community, are controlled by the company. Anyone desiring to exercise the simplest right, which in ordinary peaceful American communities is regarded as natural and unquestioned (such, for instance, as the use of public streets), must fight for them in these industrial towns.

Invariably the head of the plant is the arbiter of every undertaking in the community, his consent being necessary

[1] U. S. Coal Commission, Washington, D. C. Report dated September 8, 1923.

in all public or private enterprises. Anything, no matter how meritorious, if disapproved by him, is not and must not be carried out. In one community the inhabitants are not even permitted to hold a circus or play unless it is sanctioned by the management. Statutory violations of business men are tried by the overseer in the same manner as a legally constituted judge would proceed with such an offense.[1]

COMMUNITY CONTROL

Such power makes itself felt in every branch of community life. Some years ago, in studying the history of an industry, I had occasion to look into the genesis and developments of a local strike that had taken place some time before. There had been a most amazing occurrence in the town concerned. A mill official had functioned as the leader of a mob. There had been a scene without parallel in the history of the town, in which the local police force were utterly powerless and the danger of riot and loss of life was great. I learned these facts from the business men, leading citizens, and town officials. It occurred to me to examine the files of the two weekly papers published in the town. From neither of them could one discover that anything unusual had taken place. The issues of the date concerned merely chronicled the usual local happenings—departures, marriages, deaths, etc. One of the two papers featured on its front page an attack on trade-unionism by a brilliant writer of national repute. That was all. I asked the editor of the latter paper why there was no reference to the affair of the mob. He replied something about one's learning in time "on which side one's bread is buttered."

[1] Quoted from unpublished report by David J. Saposs, in the files of the Wisconsin State Historical Library, Madison, Wisconsin.

In the same way community leaders are sometimes influenced. Plans for civic improvement steer clear of vested interests. A business man cannot afford to place his own career too far in jeopardy in order to promote the welfare of the community as a whole. To quote from Saposs again:

Merchants who are antagonistic to the company and who render aid to labor organizations find their permits revoked. Your investigator met several of these merchants, and has learned of other instances where the corporations have exercised this kind of discrimination. In one town alone three cases were unearthed, one a shoemaker, another a plumber, and a third a baker, whose permits were revoked because the owners were in sympathy with the Western Federation of Miners and had permitted their places of business to serve as a rendezvous for men to discuss the cause of labor.

In some camps the miners and their families are required to trade at the company store. To this end peddlers or agents and canvassers will be denied admission. Sometimes even the delivery of goods purchased by the miners from outside dealers is prevented. A man who was prevented from delivering goods in a coal camp in Pennsylvania brought suit against the company. In the trial it was shown that there was a provision in the leases under which the miners occupied their houses, reserving to the coal company the right to bar objectionable people from the streets. In view of this provision the trial judge directed a verdict for the coal company. When carried to the Supreme Court the verdict was upheld. In its opinion the court said, "The entire premises were the private property of the defendant company. It had the

right to impose any lawful terms as to any part of the property, and the tenant consenting thereto, the contract became obligatory on both parties. . . ." [1]

The corporation in the company town often extends its influence over the school and the church. Saposs reports a case where two public-schools teachers were known to be union sympathizers. The company brought pressure to bear on the superintendent of schools to dismiss them. When he refused, both teachers and superintendent were dismissed by the school board.

Community leaders, both religious and civic, find it difficult to take any positive stand regarding any matter that concerns the employers' interest. They are in about the same position as the new minister in a small town who started in on the first Sunday morning with a sermon that reflected by implication on the business practices of one of the leading parishioners. On the next Sunday he trod on the toes of another of the prominent members of the congregation, and a week later he offended a third. It was evident that something must be done. One of the deacons was sent to remonstrate. He talked earnestly with the young minister, and pointed out the injury that might be done by alienating the leading men of the village. For his guidance he enumerated a list of subjects that ought to be avoided. "But see here," protested the minister, "you have included almost everything worth preaching about. What do you expect me to do?"

Considering a moment, the deacon replied: "There

[1] Harris *vs.* Keystone Coal & Coke Co., Supreme Court of Pennsylvania, 100 Atlantic Reporter 130; 255 Pennsylvania 372. For other examples of refusing admission to salesmen or delivery men see Neelley *vs.* Farr, 61 Colo. 485, testimony of Newkirk, page 489.

ain't a Mormon within fifty miles of here. Give 'em hell!"

Saposs reported a case where the clergyman differed from the company manager as to certain policies of the church.

In a few weeks his house (owned by the company) was demanded, and later dissension arose in the church, the membership becoming lukewarm, and many withholding their contributions. The minister persisted in his contention, so that the church became indebted. Then a committee was appointed to solicit aid from the company. They were informed that the company would not aid the church as long as the present minister was in charge, as they could not be expected to support anyone who disagreed with them. The manager assured the committee the support of the company in case another minister acceptable to it was chosen. Confronted by this predicament, the pastor resigned. . . . Now the new holder of the pulpit receives part of his salary from the company, has a much better house than that of his predecessor, and "co-operates" with it by carrying out its policy as to how the church work should be conducted.

At the 1923 meeting of the Pittsburgh Conference of the Methodist Episcopal Church, the superintendent of the Blairsville District said in his report:

I have met with a strange and not uncommon opposition from certain great coal companies that to me is ominous. When attempting to secure title to certain plots of ground for building churches, we have found it impossible to do so. The deeds not only recite the dimensions of the lots, often covered by first mortgages, but proceed to dictate what shall be preached and what is prohibited upon the property, with the penalty of forfeiture in case of any transgression of the conditions. In other words, our preachers are to be muzzled.

The tragedy of the situation is that communities are left without a church.[1]

CONTROL OVER LABOR

These repressive policies directed toward business men and community leaders are inspired by no passing whim. Such interference with community affairs owes its existence almost altogether to the desire of the company to strengthen its control over its own labor policies. General community control is, therefore, not the matter of first importance. Barring merchants and salesmen from camp is comparatively a minor thing. It is not always done, and, anyway, it is of far less significance to the miners than are certain other manifestations of company power. The most important use to which control of the camp can be put is that of preventing the miners from organizing or even hearing very much about unions. Organizers and agitators are kept out as a matter of course. The miners in the camp cannot hold a meeting to discuss organization, both because there is no building where they would be allowed to meet for that purpose, and because there are too many spies in such camps to make such a meeting desirable. During organizing campaigns miners in closed camps in Colorado have followed the practice of waiting until after dark and then quietly and singly making their way to some rendezvous up a canyon or on a hillside, where, in total darkness, a meeting would be held.

I had a very vivid illustration, a few years ago, of how watchful in this respect the coal companies in the non-

[1] Information Service—Research Department, Commission on the Church and Social Service, Federal Council of Churches of Christ in America. March 8, 1924.

union districts are. Having taken a train out of Birmingham, Alabama, to the near-by coal country, I got off at a station in a mining camp and began walking through the camp, conversing casually with such persons as I met in back yards or on porches, about the work of the mines, hours, wages, housing, cost of living, etc. In a short time I was met by a blustering person who demanded to know my business. I told him what I was doing, and he ordered me from the camp. He told me that he was the camp marshal, and that if I did not leave he would arrest me as a trespasser for walking on streets owned by his employer. I obeyed his orders and started down the public road in the direction of another camp owned by another company. As I was walking along, I was passed by my friend of the first camp, riding furiously on horseback. When I arrived at the entrance of the second camp there was a reception committee awaiting me, consisting of the marshals of the two camps. The men, armed very prominently with large revolvers, told me not to enter the camp. The marshal belonging to the second camp, who was not altogether unfriendly, agreed that as I described myself I was quite harmless, but my story might not be true. I might be a union organizer and I might be trying to hire labor. In either case I would be considered undesirable by his employer, the coal company, and since he was paid to keep undesirables out, he would have to keep me out. What I ought to do, he said, was to get a pass from the manager in Birmingham. If I were to bring that he would be glad to let me visit this village, where six hundred American citizens were living.

The work of the camp marshal and the conditions prevailing in a non-union mining camp are made perfectly clear in a little book recently published, embodying

the experience of a young college man who has been testing out academic theory by working as a coal miner in Pennsylvania.[1] He arrived in a place called Vintondale, looking for a job:

I had only been off the train about five minutes in Vintondale before I was hailed from behind as I was walking toward a mine and coking plant owned by the Vinton Colliery Company. On turning around I beheld a young man in riding breeches and a gray shirt, with a revolver protruding from his hip pocket, and a visored cap on his head. When he came nearer I noticed some sort of an insignia on his cap, in which were the initials C. & I., which I was told afterwards meant "Coal and Iron."

"Would you mind telling me what your business is in this town?" he asked, stepping a few feet in front of me.

"Just lookin' for work," I responded.

"What are you, a miner?'

"Yes, lookin' for a job."

"Where you from?"

"Oh, out Indiana way."

"Well, you'll find the mine office right across the tracks by the coke ovens"; and with that the policeman turned around and walked up town.

I was somewhat puzzled as to what kind of policeman this man was. His uniform was the same color as that of the state police, but it was different in appearance, and the insignia was not the same. I concluded he was a policeman paid by the coal operators at Vintondale, and this I found out later was correct.

He did not get a job at this mine, and went back to the railway station.

[1] *In Non-Union Mines—The Diary of a Coal Digger*, by Powers Hapgood. Bureau of Industrial Research, New York, pp. 28, 29, 30.

While I was waiting in the station I fell into conversation with two other men who were also waiting for the train. They were Hungarians who spoke good English and were trying to interest the Hungarians in Vintondale in a colonization scheme near Cleveland.

"Did that policeman ask you all kinds of questions?" I asked them.

"I should say he did," one of them answered. "He came up to us this morning. 'What you selling?' he said. We told him, and he did not even know what colonization meant. 'Well, you can't sell colonization here,' the policeman said, after we told him what we were doing. 'We leave town, then,' I told him. 'No, you can't leave,' he said. 'You got to see the superintendent first before you can leave.' So the policeman took us up to the big office and into the super's room. We had to explain to the super what we were doing. 'Well, you can't sell your scheme here,' the super said. 'The company owns the town and you got to get out. You leave on the next train.' So here we are," the Hungarian concluded, "and we're waiting for the next train to take us out of this damn town."

Just as the train pulled in, the policeman came riding up on a black horse and sat in his saddle, watching who got on and who got off. I was very doubtful whether this company policeman had the authority to drive people out of town in this way or to question them about their business, and I stated my doubts to the Hungarians.

"He's acting in his rights, all right," said one of them. "The company pays him to watch the town for them and they can keep anyone out of town the way you can keep a man out of your house. They own the town and can do as they please."

The power that the coal company has over the miner lies chiefly in the fact that the houses are company-owned. The leases usually contain provisions giving the company

various arbitrary rights. Usually they provide for termination of the lease at the will of the landlord, on a few hours' notice. "Down the canyon for you," is a common expression in southern Colorado. When used by a camp marshal it means eviction. When a man gets "talking too much" or going to town and hanging around union headquarters, or when he is discovered talking organization around the camp, he is usually given less than twenty-four hours to get out of camp with his family and his household goods. During the strike of 1913-14 in Colorado, the mayor of an incorporated town compelled the town barber, who owned his home in the camp, to abandon home and business and depart. The mayor was superintendent of the mine, and the reason he gave for his action was that the man talked too much with the strikers about coal-company affairs. "He was a very good citizen until the military came to Hastings," the mayor testified. "He stayed in camp and wouldn't go anywhere. As soon as the military came in we couldn't keep him in; he went down to Ludlow and all over town and peddled our business out to the strikers, and he told all of them what was going on at Hastings."

"And for that reason you ordered him out of camp?" queried counsel for the strikers.

"Yes, sir," replied the mayor.[1]

[1] Testimony of James Cameron, Superintendent Hastings mine of Victor American Fuel Co. Testimony before Congressional Committee investigating Colorado mine strike, p. 1526. House of Representatives, 63d Congress, 2d Session. Other testimony referring to practices in West Virginia and Kentucky appears in a letter from a union miner, printed in the *United Mine Workers Journal,* August 1, 1921:

> "The people sought the only refuge for the laboring man—joining a union. As soon as they joined the union and the company found it out, they were fired and

Leases are terminated as a matter of course if the men strike. That is the reason for the setting up of tent colonies whenever a strike is called in a mining region. Immediately on joining the strike the miner and his family are homeless. The union therefore secures a plot of ground and provides tents for the accommodation of all the strikers with their households.[1]

For the most illuminating information available as to the possibilities of the closed camp, political as well as industrial, the reader is referred to the opinion of the Supreme Court of Colorado in the case of Neelley *vs.* Farr.[2] Farr had been sheriff of Huerfano County, Colorado, for more than twenty years. He was the leader of his party, and was widely known as the "King of Huerfano County." In the strike of 1913-14 he was alleged to have given the support of his office to the coal operators. In the election of November, 1914, he was opposed by E. L. Neelley. Farr was declared elected by a majority of 329 votes. Neelley brought action in the county court to have the election in certain precincts set aside on the ground of fraud. He lost in the lower court and appealed to the Supreme Court, which reversed the findings and declared Neelley the duly elected sheriff.

> thrown out of the company houses, regardless of the condition of their families or the weather. The only crime the miner committed was to affiliate with a body of men who believed in equal rights to all and special privileges to none; men who thought it wrong to have to sign a yellow dog (*i. e.*, a contract) which prevented you from keeping your father overnight if the company objected; under which you would be forced to refuse your own mother a meal if the coal company forbade it."

[1] For a description of the workings of the lease system in West Virginia see Lane, *Civil War in West Virginia,* chap. vi, "Evictions and Insecurity of Residence."

[2] 61 Colorado 485.

The facts are summarized in the opinion of the court. It appeared that the county commissioners, who were of the same political party as the sheriff, Jeff Farr, had, prior to the election, created election precincts which were identical in boundaries with certain "closed camps." These election precincts, wholly on property owned by the coal companies, were patrolled by armed guards in company employ. The public was not admitted without a pass. Members of the opposing political party were barred unless they produced a pass signed by Jeff Farr. Political meetings arranged by the party to which Neelley belonged were not allowed in the camps. Distribution of campaign literature was prevented. Everyone was kept out who might be favorable to Neelley. On election day representatives of this party, including watchers, gained admission to one precinct only with the help of a detail of federal soldiers, who were present to keep order in the districts affected by the strike.

During the campaign merchants and drivers of delivery wagons were kept out in certain cases. A candidate of the opposing party was invited to take dinner in a miner's home, but was prevented by a camp marshal, who said, "There ain't nobody going down there; I am not allowed to let anyone visit there."

The testimony of one witness was considered of sufficient importance to be summarized by the court:

If there was any doubt concerning the condition of the closed camps and precincts and the exclusion of representatives of the Democratic party from discussing the issues of the campaign within the precincts comprising the closed camps, it is entirely removed by the testimony of the witness Weitzell for contestee. He testified that he was a resident of Pueblo, and was manager of the Colorado Fuel and Iron

Company; that Rouse, Lester, Ideal, Cameron, Walsen, Pictou, and McNally are camps under his jurisdiction; that he had general charge of the camps, and that there was no company official in Colorado superior to him in this respect, except the president. . . . That in all those camps he tried to keep out the people who were antagonistic to the company's interests; that it was private property, and so treated by his company; that through him the company and its officials assumed to exercise authority as to who might or who might not enter; that if persons could assure or satisfy the man at the gate, or the superintendent, that they were not connected with the United Mine Workers or in their employ as agitators, they were let into the camp. That no one we were fighting against got in for social intercourse or any other; that he and the officials under him assumed to pass upon the question of whether or not any person coming there came for the purpose of agitation. . . . The company would not encourage organizers to come into the camp, no matter how peacefully they conducted themselves; that the company did not permit men to come into the camp to discuss with the employees certain principles, or to carry on arguments with them, or to appeal to their reason, or to discuss with them things along reasonable lines, because it was known from experience that if they were allowed to come in they would resort to threats of violence. They might not resort to any violence at the time, but it might result in the people becoming frightened and leaving, and they were anxious to hold their employees. He was asked whether or not one had business there depended upon the decision of the official in charge; he replied that the superintendent probably would inquire of him what his business was. That anyone that asked Jeff Farr for a permit to enter camp would likely get it (pp. 501-502).

Of the facts disclosed in this testimony the court expressed its opinion as follows:

We are unable to find a precedent where like or similar conditions have been considered as in this case, wherein private corporations have assumed to deny the public character of an election and to arbitrarily take charge of and conduct the same as if it were the sole private business of the corporation. These companies plainly connived with certain county officials to secure the creation of election precincts, bounded so as to include their private property only, and with lines marked by their own fences or guarded by their own armed men, and within which were only their own employees. They excluded the public from entrance to such election precincts, labeled the same as private property, and warned the public that entrance thereon constituted trespass. They denied the right of free public assemblage within such election precincts, and likewise the right of free or open discussion of public questions therein. They denied the right to circulate election literature or the distribution of the cards of candidates within such precincts. They secured the selection of their own employees exclusively as judges and clerks of election, and by the location of precinct boundaries no other than their employees could so serve. They apparently made the registration lists from their payrolls. They kept such lists in their private places of business, and in charge of their employees. They prohibited all public investigation within such election precincts as to the qualifications of persons so registered as electors of the precinct. Through their employees, acting as election officials, they assisted numerous non-English-speaking persons to vote by marking their ballots for them in plain violation of the law. They provided other non-English-speaking persons with the fraudulent device hitherto described, by which such persons might be enabled to vote the Republican ticket without being able to read either the name of the candidate or the party ticket for which they so voted. They coerced and intimidated their employees in many instances.

We find no such example of fraud within the books, and must seek the letter and spirit of the law in a free government as a scale in which to weigh such conduct.

In so far as the conditions described in this chapter refer to coal camps, it is evident that reference is to the non-union mines such as are to be found in parts of western Pennsylvania, West Virginia, Kentucky, Alabama, and southern Colorado. The anthracite districts and the greater part of the bituminous districts are organized, and the conditions described here do not prevail. Organized camps are open to the public.

But the non-union camps are generally closed, and consequently it is exceedingly difficult for the unions to make headway in them. The power of the company to exclude the unions from these camps is probably greater than that of any other employer in any other industry. Since the decision of the United States Supreme Court in the Hitchman case, the difficulties of organizing a union in a closed camp making use of the so-called "yellow dog" contract have become almost insurmountable.

READING REFERENCES

FITCH, JOHN A.: "Law and Order—The Issue in Colorado," *The Survey,* December 5, 1914, pp. 241-258.

HAPGOOD, POWERS: *In Non-Union Mines—The Diary of a Coal Digger.*

LANE, WINTHROP D.: *Civil War in West Virginia.*

United States Commission on Industrial Relations, Final Report and Testimony, vol. iv, pp. 3539-3679.

CHAPTER XII

STRIKES

WHEN a strike takes place unrest has reached the point of revolt. A strike may be a peaceable, orderly affair, a mere "folding of the arms," or it may be disorderly and violent. It would be possible to make a list of strikes showing all the possible gradations ranging from peaceful methods to civil war. Violence, when it comes, cannot be ascribed to any one cause, nor does it have its origin exclusively in the camp of either party to the dispute. There is no established formula to be invoked as an explanation of violence, nor for any other particular strike phenomenon.

In general it may be said that the strike tactics of the employer are both offensive and defensive, while those of the strikers are apt to be purely offensive. In recent years employers have realized more than ever before the importance of having the public on their side. There is a growing tendency, therefore, to use advertising space in the daily papers for presenting the issues of the strike as seen by the employer. Sometimes the space is used to discredit the union; more frequently, though, it is used to show why the demands are unreasonable or why they cannot be met.

Sometimes, but more rarely, advertising space is used for the purpose of making an appeal to the rank and file of strikers, over the heads of their leaders. This was done in Pittsburgh at the beginning of the steel strike in

1919, "Go to Work" ads in several languages being prominently displayed in all the papers.

Another sort of appeal to the public is sometimes made through pamphlets distributed through the mail to selected lists. One of the most notable examples of this sort of publicity was the distribution of a series of pamphlets by the coal companies involved in the 1913 strike in Colorado. The series was entitled "Facts Concerning the Struggle in Colorado for Industrial Freedom," and contained an array of opinion and alleged fact on the issues and personalities involved. These pamphlets were circulated very widely throughout the United States.

The main purpose of the employer is, however, not to cultivate public opinion, but to get his plant running. A piece of strategy frequently employed where a strike is fairly effective is to shut down the plant at the beginning of the strike and make no attempt to operate it, and then after a few weeks announce that it is to start up on a given day. This is a severe test of the morale of the strikers. They have been out long enough to get over the first enthusiasm. One or two pay days have gone by with nothing coming in, and many of them have begun to question the wisdom of the strike. Such an announcement spreads uncertainty and doubt, since no one knows how many may return to work. No man wants to be conspicuous by standing out when others are going back. The result sometimes is a rush back to work on the day the plant is opened that breaks the backbone of the strike.

USE OF STRIKE-BREAKERS

When an employer is reasonably certain that the strikers, or a majority of them, will not return to work

for a long time unless concessions are made, or unless it can be made to appear that they have lost, he often concerns himself with securing substitutes. He may secure professional strike-breakers, men who are willing to go anywhere and break any strike, partly on account of the high pay generally offered for such services. There is no expectation on either side that such men are to be retained permanently. They are generally unsatisfactory as workmen. They are hired, not on account of their skill or reputation for industrious habits, but as a demonstration that it is possible to secure men. This sometimes results in "throwing a scare" into the strikers such as to bring the strike to an end. If the employer is not certain that such methods will accomplish the desired result, or if he is filled with resentment against the strikers, he may set out to secure a permanent force to take the places of the men who have struck.

Strike-breakers are generally secured through private employment agencies, though they are sometimes provided by the employers' association to which the owner of the struck shop belongs. Some associations of employers maintain a permanent force of strike-breakers who can be shifted about from one plant to another, from one part of the country to another, as strategy dictates. Members of employers' associations whose plants are unaffected by a strike often assist a member whose plant is tied up, by filling his orders in their own shops.[1]

Where strike-breakers are to be employed, or a new force taken on, it is often advisable to have a fence or a stockade around the plant. Most plants that occupy several buildings and are somewhat isolated are so equipped.

[1] Cf. Bonnett, *Employers' Associations in the United States*, chap. iii, iv.

It is a common belief among labor men that they were built for use in time of strike. It is probable that most of them are to be accounted for on other grounds, but it is true that such structures are often very useful during a strike. The fence makes it possible to conceal what is going on inside. If there is a noise and smoke the usual inference is that work is being done. This may not be the case, but if no one can see into the plant, the illusion may be kept up and the morale of the strikers broken. Sometimes the new crew is housed and fed inside the plant. In such a case the fence undoubtedly affords valuable protection. It is useful also to keep new workers from leaving, if any should desire to do so. Sometimes a man is hired for a strike job who has no desire to take another man's place and whose first knowledge of the strike is obtained on his arrival at the plant. Such a man leaves as soon as the opportunity presents itself. When he is inside a fence with armed guards all about, it is sometimes more difficult to get away than may be imagined.

A number of years ago, when the writer was an employee of the New York State Bureau of Labor Statistics, he investigated a strike in an upstate village. Men were brought in as strike-breakers who did not know that a strike was in progress. On discovering the fact they refused to go to the plant. A company of the National Guard on strike duty thereupon compelled them to march to the plant, where they delivered them to the custody of armed guards on the mill property. Men who were hired in various parts of the country to work in Colorado coal mines during the strike of 1913-14 testified that they were not told of the strike until their journey was nearly at an end. Some of them stated that they were brought to Colorado in locked cars and under guard. After arriving

at the mines, some who wished to get away were halted and turned back by militiamen.[1]

So much for the defensive tactics. They are defensive in that they are directed to the protection of the employer's interests. Their objective is the revival of plant operation. But there are offensive tactics as well, directed against the strikers and their leaders, and these tactics, though not so widely used, are just as widely known as the others.

USE OF FORCE

In a strike, as in any other movement of groups of people, leadership is of utmost importance. If a strike leader is removed, the strike itself may collapse. The arrest and imprisonment of Debs during the Pullman strike of 1893 was fatal to the movement.[2] Impressed with this fact, persons opposed to particular strikes have

[1] See testimony before subcommittee of Committee on Mines and Mining, U. S. House of Representatives, 63d Congress, 2d Session, on the following pages of published hearings: pp. 114, 621, 822, 1043, 1142, 1249, 1448, 1452, 1856.

[2] In arguing before a committee of the United States Senate a few years ago in behalf of a bill to prohibit strikes on railroads pending investigation and report by a government commission, Mr. Everett P. Wheeler, a New York lawyer, told the committee that the law could be enforced, if enacted, by arresting the leaders of any strike. As an illustration of the effect on a strike of the removal of the leader he cited the Debs case as follows:

"An appeal was filed by Attorney-General Olney under the direction of Mr. Cleveland, alleging that Mr. Debs and his associates were combining to obstruct the transportation of the country and to obstruct the interstate commerce of the country, and the court enjoined them from doing that. Mr. Debs was advised by his counsel that the injunction was illegal, and he disobeyed it. He was arrested and put in prison. His testimony before the Commission of Inquiry was that the arrest of himself and his associates broke up the strike. It is very interesting, that testimony of Mr. Debs before that commission, and I commend it to the attention of the committee. He says that it was not the troops that broke up that strike; it was not the

not infrequently made efforts in one way or another to get rid of the leaders. In doing this they have not always been scrupulous about the legal rights of the persons concerned.

Strike leaders have been attacked by mobs and seriously injured, or driven from the vicinity. This happened a number of times during the late war, and was to be accounted for in part by war psychology. The lynching of a strike leader, Frank Little, at Butte, Montana, early in 1917, is a case in point. But there have been many cases of mob violence or other acts of illegal aggression that cannot be accounted for in that way.

Emmet Flood, an organizer for the American Federation of Labor, was ordered from Morgantown, West Virginia, in 1909. The mayor wrote him that in view of his mission "his room was infinitely more desirable than his presence." He warned him also that "the feeling of hostility against union agitators was strong, and that he would be safer out of Morgantown." [1] In the same year organizers were driven from Vandergrift, Pennsylvania, where there is a large mill of the American Sheet and Tin Plate Company. In 1913 Charles H. Moyer, president of the Western Federation of Miners, was directing a strike of copper miners at Calumet, Michigan. He was set upon in his hotel by a mob, beaten and shot, and placed on a train bound for Chicago. A part of the mob accompanied him on the train and remained with him until well out of the strike district.[2]

police that broke it up, it was the action of the United States courts."—U. S. Senate Committee on Interstate Commerce, Washington, D. C., January 3, 1917.

[1] John A. Fitch, "The Human Side of Large Outputs," *Survey*, April 6, 1912, pp. 26, 27.

[2] G. R. Taylor, "Moyer's Story of Why He Left the Copper Country," *Survey*, January 10, 1914.

William Z. Foster, leader of the steel strike of 1919-20, was driven out of Johnstown, Pennsylvania, early in 1920, when he went there to address a meeting of strikers. He was met in the street by a mob led by two men, said to be, respectively, secretary of the Chamber of Commerce and secretary of the Y. M. C. A., and compelled to return to the station and take a train out of the city.

Where strike leaders have been treated with violence, their assailants have sometimes been local business men, not connected with the industry concerned; and sometimes they have been direct representatives of the industry, as in assaults that have been particularly characteristic of some of the coal-mining districts. Local business interests suffer during a strike, and the losses sustained by individual business men are often relatively very much greater than any injury felt by the industry directly concerned in the strike. This often leads to a state of mind that has a tendency to condone or even to advocate lawbreaking and violence when directed against the strike leaders. One of the most prominent citizens of Paterson, New Jersey, not connected with the silk industry, expressed regret to the writer during the silk strike of 1913 that the leaders had not been driven out of town. He said that the community would have been justified in taking any measures, whether legal or illegal, to get rid of the "outside agitators." [1]

The promotion of violence during a strike, either to create dissension among the strikers or to give the strikers a bad name, is sometimes thought to serve the employer's

[1] See also testimony of John W. Ferguson and James W. Cooke, vol. iii, Report and Testimony, U. S. Commission on Industrial Relations, pp. 2578, 2607.

interests.[1] During the textile strike at Lawrence, Massachusetts, in 1913, a local business man "planted" some dynamite with the expectation that it would be discovered —as it was—in order to create the impression that the strikers were turning to violence. He was tried and convicted and paid a fine of $500.[2] The methods of detective agencies when hired to break strikes often include the deliberate promotion of violence. The description by such an agency of its own methods in Chapter X shows this clearly enough.[3]

An employer not long ago told me how he handled a strike. He hired thugs to assault the pickets on duty before his plant. Under cover of the resulting excitement, those who wished to come to work came into the plant without interference. To assure the success of this maneuver, he put the policeman on the beat on the factory payroll at $35 a week.

Illegal and violent tactics like these may range from incidents of minor importance to events of considerable magnitude, involving large numbers of people. They are of more than local importance when they take the form of deportations of groups of strikers as in the Cripple Creek strike of 1904, when several hundred men were rounded up by armed men and placed on a train to be unloaded later several hundred miles away in a desert region.[4] On a still larger scale was the deportation from

[1] See Hunter, *Violence and the Labor Movement*, chap. xi, "The Oldest Anarchism."

[2] Strike of Textile Workers in Lawrence, Massachusetts, Senate Doc. no. xxxi, 62d Congress, 2d Session.

[3] See also Interchurch Report, "Public Opinion and the Steel Strike," chap. i.

[4] See report on Labor Disturbances in Colorado, Senate Document No. 122, 58th Congress, 3d Session, Special Report U. S. Commissioner of Labor, pp. 2; 6-19; 267-268; 274-278; 308.

Bisbee, Arizona, of more than a thousand strikers in July, 1917. The mob in this case was led by the sheriff of the county and was participated in by officials of copper companies.[1]

William H. Coolidge, chairman of the board of directors of the Island Creek Coal Co., which has mines in Logan County, West Virginia, gave some testimony before the United States Senate Committee on Education and Labor, in October, 1921, which reveals the attitude and the tactics of the employer who is bitterly hostile to unions. His company would refuse to negotiate in any way with the United Mine Workers: "We decline to deal. . . . We just as much decline to talk with them, knowing what they intend, as we would decline to sit down and talk with a robber or any other man who told us that when he got the power he intended to take our property away from us." His company would discharge an "agitator", or even a man who, peaceably and without making trouble, talks about the benefits of joining a union, because he would be like a man who came into a house announcing his intention to rob it. "I do not care how pleasant he was when he came in; you probably would exclude him the moment you found out that that was what he proposed to do." Consequently, Mr. Coolidge stated that his company did all it could to keep organizers out of Logan County. He argued that deputy sheriffs, who received their salaries, in part, from his company, had the legal right to exclude union organizers.

"So that," the chairman asked, "Your position is that the sheriff could drive men out of the county intending to organize the United Mine Workers just as some one who

[1] Bruère, Robert W., "Following the Trail of the I. W. W." Reprinted from the N. Y. *Evening Post*, 1918.

was going to organize an association of bank robbers?"

"Sure," replied Mr. Coolidge.[1]

THE STRIKERS' METHODS

Unlike the employer, whose methods have been described as both offensive and defensive, the strikers have but one set of methods—all of them offensive. The act of calling a strike is an act of aggression. It is a challenge to the authority of the employer, and its purpose usually is to effect changes. Since the strike itself is a manifestation of offensive tactics, it follows that every act in support of the strike is also offensive.

Strikers do not use advertising space nearly as much as employers do. This is partly due to lack of funds and partly to a class-conscious indifference to middle-class opinion. The strikers will have the sympathy of other workers, anyway, and they doubt the value, in the long run, of other support. Nevertheless, in recent years an increasing use of newspaper space by unions is noticeable.

A very important matter is the raising of funds for the support of strikes. Every union has its war chest. When an important strike occurs, not only is this war chest drawn upon, but additional funds are raised wherever possible from members of the union who are not on strike, from other unions, and from individuals, both within and without the labor movement. A very common item in the financial statement of unions is the amount contributed to other unions for the support of strikes. These funds are used principally for the payment of strike benefits, for groceries and other food sup-

[1] Hearings before Committee on Education and Labor, U. S. Senate, 67th Congress, 1st Session, pp. 908, 909, 917.

plies furnished directly to strikers' families. Enormous sums can be used in a short time in the payment of insignificant strike benefits. If only $3 a week were paid each striker, a strike of 5,000 workers would call for an expenditure of $15,000 a week for that purpose alone. If the strike should last four weeks, the total cost for strike benefits would be $60,000. During the lockout in the men's garment industry in New York in the winter of 1921, 50,000 wage-earners were involved a part of the time, and altogether the lockout lasted nearly five months. If an average of 30,000 were out of work for four months, and benefits of $3 a week had been paid, the cost would have been over a million and a half dollars. It would have taken $33,000,000 to pay that trifling sum to each of the 550,000 bituminous coal miners who were on strike for twenty weeks in the summer of 1922.

It is coming to be recognized as uneconomic and wasteful to pay a flat cash benefit to every striker. Their needs are not uniform. Some are heads of families; others have no dependents. Some have resources of their own; others are without funds. Some, furthermore, are able to spend more wisely than others, so a cash benefit that would meet the needs of one may be wholly inadequate to another. In several strikes of recent years no cash benefits have been paid, but commissaries have been set up at which those who had need of provisions could secure them. The cost of maintenance is less under this arrangement, because many of the strikers are able to finance themselves, and these do not apply for help. It is a more economical arrangement, also, because the union, buying in large quantities, is able to secure better prices than are open to the individual purchaser. Commissaries were set up during the lockout in the men's clothing industry in 1921.

They were used also with notable success in the steel strike.[1]

PICKETING

Few strikes are conducted without resort to the device of picketing. This practice consists essentially in strikers or their representatives attending at some point that will have to be passed by those going to work, for the purpose of appealing to them. Usually the picketing takes place at the gate or entrance to the factory. The pickets may be few in number or the strikers may appear in force in what is known as "mass picketing." This sort of picketing is for a double purpose. It is considered desirable both to impress workers and employer with their numbers, and to subject the workers to the necessity of walking through a large and scornful group in order to get into the factory.

The first purpose of picketing may be, and often is, to inform those going to work that there is a strike. The employer may advertise for workers without mentioning this fact. Many a man going to the factory in search of employment learns of the real state of affairs from one of the pickets, and will go no further. The second purpose is persuasion. Regular employees who continue at work and job seekers who are not at once deterred from seeking employment on receiving information that there is a strike, are talked with and an effort made to convince them that they ought not to go to work. They are urged to join the strikers and help bring pressure to bear on

[1] For a full account of the commissary method, as well as its application to the steel strike, see Foster, *The Great Steel Strike and Its Lessons*, chap. xii.

the employer in the direction desired. Outsiders are often given a meal and a railroad ticket back home.

Picketing in the form of communicating information and peaceful persuasion is a natural and sensible procedure, and rationally can no more be condemned than electioneering in a political campaign for a candidate or a measure. If the strike itself is legitimate, and in principle it has not yet been held otherwise, then it cannot be considered illegitimate or improper to make public the fact that there is a strike and to urge wage-earners as well as others to support it.

It is impossible to say whether there is any general disapproval of picketing when it goes no further than this. It is true, however, that court decisions and the issuance of injunctions are making it increasingly difficult for unions to carry on the practice. The belief that all picketing leads to violence is coming to be held by an increasing number of judges, and there is an increasing tendency on their part to issue injunctions against them on the theory that any picketing is an act of intimidation and therefore illegal. Partly as a result of acts of violence committed on or by pickets, and partly because of the attitude of courts, there is probably a growing sentiment outside of labor circles against the practice. Sometimes there are disquieting statements from sources close to the unions. For example, Luke Grant, formerly active in the carpenters' union, has said that peaceful picketing "may be lawful, but it is entirely useless and ineffective." [1]

It would seem to an outsider that if the strike is to have any chance of success some form of picketing must be carried on as long as the employer follows

[1] Report on structural iron workers' dynamite campaign, U. S. Commission on Industrial Relations, 1915, page 110.

the practice of hiring strike-breakers. Even if it is assumed that there is no need of approaching regular employees who have not joined the strike on the theory that they know all about the situation, it must be conceded that it is only fair that the strikers should have an opportunity to state their case to the new employees. Any other arrangement constitutes unequal treatment of employer and striker. But it is also natural and often necessary to present the case to those regular employees who have not joined the strike. They are not, as a rule, members of the union. Most of them have not attended the meetings preceding the strike, and have not heard it discussed. There is a legitimate reason for approaching them and telling them of the strikers' motives and purposes. Nevertheless, it must be recognized that the line where persuasion stops and intimidation begins is vague and hard to locate with definiteness. It must be recognized that picketing brings into close contact two groups who are suspicious of each other and possibly hostile. The striker has a great deal at stake. In addition to that, both striker and non-striker are subject to an emotional feeling that makes cold reasoning almost impossible. It is probable that in every strike there are some who have quit work unwillingly, who feel that the cost is too great, the loss of even a single week's pay more than they can bear, but who are still less able to bear the reproach of their fellows that they would be made to feel if they remained at work. There are others of the same mind who go to work the first day of the strike, but who give up the moment they are approached by a picket with the reminder that those who work are "scabs."

Social pressure is a thing of terrible power, and it is felt in every walk of life. In one group it dictates the

clothes one is to wear and the amusements he is to engage in. In one section of the country it requires allegiance to one political party, elsewhere to another. It may stifle discussion at one time, at another mete out ostracism to one who dares to express an opinion contrary to the one generally prevailing. The same condition prevails among groups of wage-earners. He who goes contrary to the judgment of the majority is considered a traitor to his class. He is an outcast, a "scab." His wife is made to feel that she is the wife of a scab, and his children are reminded of their father's break with the worker's moral code. That is a terrible sort of pressure to resist. When he goes to work he must pass groups of acquaintances, neighbors, possibly, who tell him in unmistakable language what they think of his course of action. Even if they do not speak, he can read in their eyes the scorn they feel. There is no need of words to convey their thoughts.

In this sense all picketing represents force. The fact that it is not physical is not always material. Social force is often more effective than physical. But picketing often leads directly to the use of physical force also. There is suspicion and hostility on both sides at the outset. If the first appeal is ineffective, hostility grows. Conversation, under such conditions, can easily lead to blows.

THE STRIKER'S ATTITUDE TOWARD HIS JOB

It is necessary to understand the point of view of the striker. He has quit his job, not because he is through with it, but because he wants to make it a better job. He has no thought of abandoning the industry or the employer. He has withdrawn temporarily in the hope that his withdrawal and the consequent inconvenience to

his employer will have an effect on the job. He hopes that changes will be made as a result of which the job will be a more satisfactory one when he goes back to it. He thinks of it, therefore, as his job. He is undergoing hardship and loss in behalf of that job. He has an eye on the future and on the opportunities that it will hold for his children, as well as for himself. Now, along comes a rank outsider and walks into the plant and takes the job that belongs to another man, and for which he has sacrificed nothing. Despite the fact that he has had the same opportunity that the striker had to get a job of his own, he has deliberately chosen to reach out and take what belongs to another. He is worse than a thief, in the striker's opinion, for the ordinary thief only takes money or goods, the results of past effort. The strike-breaker steals the future; he takes hope and opportunity and the worthwhileness of living from a man who has done him no wrong.

More than thirty years ago Andrew Carnegie wrote sympathetically on this very point: "While public sentiment has rightly and unmistakably condemned violence, even in the form for which there is most excuse, I would have the public give due consideration to the terrible temptation to which the workingman on a strike is sometimes subjected. To expect that one dependent upon his daily wage for the necessities of life will stand peaceably by and see a new man employed in his stead is to expect much." [1]

So the strike-breaker is an object of scorn and hatred. He is a "scab"—a creature without rights that any honest man is bound to respect.[2] The fact that the strike-breaker

[1] *Forum*, vol. i, 1886, p. 549.

[2] This attitude is illustrated further by a statement credited to David Williams, secretary of the New York Strike Commit-

may himself be the victim of hard circumstances, the fact that he may *not* have had an opportunity to get another job and that the choice may have lain between "scabbing" and bitter hardship for *his* family, do not, as a rule, enter the striker's mind. The instinct of self-preservation is at work, and woe to that strike-breaker if he goes out alone at night.

ATTITUDE TOWARD VIOLENCE

Assaults on strike-breakers and counter assaults on strikers are consequently too often the outgrowth of strikes. Sometimes these assaults are carefully planned; but ordinarily it is more probable that they arise spontaneously. It cannot be denied, however, that unions have at times followed out a program of violence deliberately planned and executed. Evidence has emerged here and there of the employment by unions of thugs and

tee during the strike of the Federated Railway Shop Crafts in the summer of 1922. The question of seniority was an important one, the executives insisting that preference should be given to the "loyal" employees who stayed at work. Mr. Williams was quoted as follows:

> "If the strike-breakers are worthy of protection now, then Judas had a right to take the thirty silverings and lead the Roman horde to the praying Carpenter in the garden of Gethsemane; then Benedict Arnold had the right to direct the soldiers of King George to the sleeping fort on the Hudson—then every spy and traitor has a right tc sell his labor to the enemy.
>
> "The executives could go no further; they should erect a monument to every coward who refused to fight in the late war; they should sanctify every traitor who refused to abide by the will of the majority, for in the future, if the new creed is adopted, the yellow coward will be held up as a hero, while the majority who want to fight for a better civilization will be branded as outlaws."—*New York Times,* Reprinted in *American Railroads,* (N. Y.), August 7, 1922.

gunmen, and their use to intimidate or physically injure non-union workmen. Such evidence exists in particular with reference to some of the building-trades unions and the teamsters union in Chicago, and certain unions [1] in New York. It is well established, also, that members and representatives of the United Mine Workers at times have purchased rifles and machine guns and carried on a sort of warfare; not with non-unionists, but with deputy sheriffs or mine guards—both in company pay. This, however, arises out of a unique set of conditions, and requires separate treatment.[2]

The chief example in the United States of violence deliberately planned and put into effect on a large scale is the dynamite campaign of the Structural Iron Workers Union. The campaign of the "Molly Maguires" in the anthracite coal region of Pennsylvania in the 'seventies was one of murderous violence and terrorism, but it was not a union movement, and its purpose was not akin to the usual purposes of unions, though the participants were largely miners. The Western Federation of Miners, operating in the metal mines of the West, had a most tempestuous career in the 'nineties, and they were doubtless guilty of their share of violence, whether one takes the Orchard confession at its face value or not. But they lived at times under conditions of open warfare, under a régime where the best gunman won. A society that permits deportations of strikers at the point of the gun, and where the state militia disregards and disobeys the rulings of the courts, is a society that makes private war-

[1] Cf. Testimony of Arthur Woods before U. S. Commission on Industrial Relations, vol. xi, p. 10550.

[2] See chap. xiii.

fare and violence inevitable.[1] Neither of these examples constitutes the sort of carefully-thought-out program and the actual perpetration of acts of violence in the absence of immediately provocative conditions that was represented in the so-called dynamite campaign.

THE DYNAMITE CAMPAIGN

In 1906 the Structural Iron Workers' Union declared a strike against the National Erectors' Association because of an alleged breach of contract by one of the members of the association in subletting a contract to a firm employing non-union labor. As a result of the strike the association declared that its relations with the union were at an end. It adopted a so-called "open-shop" policy, and has made no agreement with the union since that time.

The union, failing to make headway in its strike against this powerful group of employers, adopted a policy of inflicting losses on members of the association by wrecking with dynamite buildings and bridges in course of erection. This campaign went on all over the country for several years. It was revealed in the trial of forty men, most of them officers and members of the union, in Indianapolis in 1913, that a crew of dynamiters had been on the payroll of the union and that they had been paid by the "job." Bombs were set off in places as widely separated as New York, New Orleans, and Salt Lake City. They were made of dynamite, and attached to an alarm clock so adjusted as to cause an explosion at the hour desired. The agent to whom the work was intrusted would place

[1] See Report on Labor Disturbances in Colorado, Senate Document No. 122, 58th Congress, 3d Session, Special Report of the U. S. Commissioner of Labor, pp. 184-188; 205-206.

the bomb at night set to go off several hours ahead, and then take a train out of town.[1]

This was a campaign against property, and, marvelously enough, no one was injured in all of the scores of explosions that took place all over the country [2] in pursuance of the campaign against the Erectors' Association. As a direct outgrowth of the campaign, however, the building occupied by the Los Angeles *Times* was destroyed, with a loss of twenty-one lives. The bomb which destroyed this building was placed by James McNamara, who was employed for the dynamite campaign by his brother John, secretary of the Structural Iron Workers' Union. At the trial in Los Angeles in 1911 the McNamaras confessed their guilt and were sentenced, James to life imprisonment, and John McNamara, secretary of the union, to a term of fifteen years. This term was shortened for good behavior, and John McNamara was released in 1921. The other officials of the union were tried in Indianapolis in 1913 for their complicity in the dynamite campaign, were found guilty, and sentenced to terms of imprisonment varying from one to seven years.[3]

No satisfactory explanation of this resort to violence

[1] John A. Fitch—"The Dynamite Case," *The Survey*, February 1, 1913, page 607.

[2] "From February, 1908, to April, 1911, seventy explosions took place; 43 jobs of members of the National Erectors' Association and 27 on work of independent contractors. . . . In all about 100 explosions or attempts to dynamite occurred from the beginning of the year 1906 until the end of the year 1911."—Grant, Report on National Erectors' Association and the International Association of Bridge and Structural Iron Workers, for U. S. Commission on Industrial Relations, p. 123.

[3] Curiously enough, they were indicted and tried for the technical offense of transporting explosives across state lines without a federal license. The trial showed clearly what was done with the dynamite, but there is no federal law making destruction of private property a crime.

has ever been made. The union is and always has been of the conservative type. Its officers were not revolutionists, still less terrorists in the accepted sense. They were not members of any order whose tenets involved the "propaganda of the deed." They did not belong to an extremely exploited group. They had the eight-hour day and their wages compared favorably with those of other building craftsmen. The only explanations for the desperate character of their fight that sound plausible are these: It is pointed out that the character of their work, calling for great physical strength and courage, attracts a somewhat reckless, daredevil type. The policy of the Erectors' Association, dominated as it seemed to be by the U. S. Steel Corporation, was considered a threat to the existence of the union. It was noted that the Steel Corporation had succeeded in destroying every other union with which it had anything to do, and the twelve-hour day was the established working schedule in its mills and furnaces.[1] The fear of being reduced to the same condition as the workers in the steel mills is believed by many to have been sufficient to lead a somewhat reckless, rough, and hardy group of men into a campaign of violence. Whether this is an adequate explanation or not, it is the only one yet offered that is worth considering.

One of the most shocking events that ever took place in a labor war was the killing of more than a score of men in July, 1922, at Herrin, Illinois, during the nation-wide coal strike. Herrin is in Williamson County, in the heart of the coal-producing section of Illinois.[2] The 13,000

[1] A policy which was abandoned in 1923.

[2] This statement of the Herrin affair is summarized from the report of the U. S. Coal Commission, dated September 8, 1923.

miners who live in that county are all members of the United Mine Workers of America, and they came out on strike on April 1, 1922, as did a half million other union miners throughout the country. Near Herrin there was a strip mine, operated by the Southern Illinois Coal Company. A strip mine is one in which the coal lies so near to the surface that steam shovels are used to remove the soil over a large area, laying bare the coal, instead of sinking a shaft and digging out the coal underground. This company entered into an agreement with the union to continue during the strike the work of uncovering the coal, but promised not to dig out or ship any coal. Under this agreement union men were employed until June 13th, when they were laid off and non-union men made their appearance, together with armed guards from a Chicago detective agency. The union began to picket the mine. Incoming workers were intimidated. Stories were circulated of acts of violence by the armed guards on the highway running past the mine. Business men, public officials, and union leaders pleaded with the owners to suspend operations and pointed out the danger of bloodshed, but without avail.

On June 21st a truckload of workmen coming in to be employed at the mine was attacked and four men wounded, one of them fatally. Following this affair a mob raided hardware stores in Herrin and another near-by town, and took all the guns and ammunition they could find, telling the owners of the stores to send bills to the local unions. That afternoon the mine was surrounded by a mob of armed men, and in the fighting that ensued three union men were killed. Apparently hostilities were suspended for the night. What happened next day is described by the United States Coal Commission as follows:

Conference after conference took place in the hope of adjusting the situation. Shortly after daybreak Thursday morning firing began again. The survivors of the mine claimed their white flag was fired on and ignored. The besiegers claim the besieged fired from under the white flag. The fight did not last long and there was a parley. It was agreed that the besieged should march out unarmed and have safe conduct out of the county. It is reasonably certain that those who made the promise made it in good faith; but in the meantime recruits were arriving by the hundreds, not only from Williamson County, but from adjacent counties. The crowd became rampant. It was reported that troops were on the way. This, added to previous stories, made the crowd wild for revenge. The fact that most of the stories were untrue made no difference; they believed them and acted accordingly. Three-fourths of a mile from the mine McDowell, the superintendent, was taken from the line of prisoners and killed. Then some one suggested that they "kill them all and stop the breed." The suggestion was acted upon, and the men were taken from the road into the wood, lined up before a barbed wire fence, and told to run. As they ran, while climbing the barbed wire fence, the mob fired. There were between 40 and 60 prisoners; 16 were killed at or near the barbed wire fence; some escaped and were never captured. Hunting parties pursued those who escaped.

No one has been convicted for these murders. A large number of miners were indicted, but after two trials, in which the accused were acquitted, all other indictments were quashed. The failure to convict is said to be due to the fact that public sentiment in the community is overwhelmingly with the miners. The Coal Commission states that this attitude was increased by the storm of

condemnation that appeared in the press all over the land.

As for the crime itself, the Coal Commission offers the following as entering into the prevailing psychology: In the earlier history of coal mining in Williamson County there had been wretchedness, underpayment, disregard for safety in the mines, and general exploitation.

Then came the union in 1898 and 1899. Peace and goodwill and mutual respect have been the general rule since that time. The Workmen's Compensation Law was enacted. Earnings advanced to $7, and even $15, a day; improvement in the working conditions was reflected in the appearance of the workmen, their families, their manner of life, and their growing cities and public improvements. There are 13,000 miners in the county, 62 per cent of whom own their own homes, and most of them own automobiles. All occupations are unionized. They believe in the union, for they think it brought them out of the land of bondage into the promised land when their government had been careless or indifferent to their needs. They hold themselves to be good Americans and proved it during the Great War, but what they have of daily comfort they think comes from the union and not from the government. . . . There is no doubt that when the promoter of the Southern Illinois Coal Company started to operate his mine in defiance of the union, he was inviting mob violence and flirting with death; he knew it and prepared to meet it. The resentment was spontaneous and instantaneous. He challenged the supremacy of the union. Those in the mob undoubtedly believed that it was an attempt to return to old conditions before the mines had been unionized. There were, of course, fatal omissions of duty on the part of public officials, and neither the officials nor the public wanted troops to protect the operator in his union-destroying operations. It might have been stopped by the sheriff, by the

officers of the miners' union, by public sentiment, but all were for the union, and all believed that an attempt was being made to destroy it.

This is sufficient to explain the suspicion and resentment of the strikers, but it does not explain the murder, under peculiarly revolting circumstances, of the defenseless prisoners. It is an incident that must take its place in industrial history alongside the massacre at Ludlow, Colorado, in April, 1914, when, as the result of an attack on a tent colony of strikers by militiamen, many of whom were mine guards in the pay of the coal companies, no less than twelve children and two women lost their lives.

PROVOCATIVE CONDITIONS

In most cases of labor violence the acts do not seem to have been the result of a definite policy, but have grown out of particular conditions that could not have been anticipated. Violence often is the result of acts of an irritating character, acts that are an affront to the self-respect of the workers or their sense of personal dignity.

In 1910, for example, a strike occurred in the Bethlehem Steel Works. Acts of violence were precipitated almost immediately, and the State Constabulary were called in. The strike arose, indirectly, over the issue of seven-day labor. There had been an unusual amount of it. In the month before the strike 43 per cent of all the employees worked seven days a week.[1] A man was discharged for avoiding Sunday work through a subterfuge. A committee of his fellow workmen were appointed to ask the man-

[1] See U. S. Commissioner of Labor, Report on Strikes in Bethlehem Steel Works, in South Bethlehem, Pennsylvania, May 3, 1910, p. 12.

agement for his reinstatement and also to ask for the elimination of Sunday work. The answer of the management was to discharge the committee. The men struck at once in defense of their representatives.

Mr. Fred J. Miller, President of the American Society of Mechanical Engineers, in commenting on this strike at a meeting of the Taylor Society in December, 1920, said that their action was what might be expected under such circumstances as long as "workmen retain any of the elementary principles of manhood." His remarks do not specifically name the Bethlehem Steel Company, but they leave no one in doubt as to the event to which he was referring. After explaining, as above, the causes leading up to the strike, Mr. Miller said:

Now, we may perceive that there were several things in connection with that strike that may interest us. To begin with, it shows, as has been shown elsewhere before that strike and since, that serious labor trouble may occur where labor unions take no part in it. In other words, men can be brought together for adverse action and to make war or to follow the methods of war without joining a union. It has happened many times and can happen again.

Another lesson is that where a committee appointed serves voluntarily in the interests of their associates, whether that committee be composed of workingmen or whether it be composed of business men or lawyers or any kind of men, if that committee acts in the interest of their companions and of their class, then the people on whose behalf they act will not submit to discrimination or injury being done them without a fight. That has always been so and it will be so so long as workmen retain any of the elementary principles of manhood. No group of employers would allow an injury to be done to voluntary representatives of theirs in a negotiation of that sort if they could possibly help it. They always

resist it and fight against it, for such is the nature of men. It is human nature for a busy executive, harassed for production and so on, to resent the interference of men whom he calls "disturbers" and regards as the cause of all the trouble. He imagines there would be no trouble were it not for these men who have waited upon him to adjust the trouble. He thinks they have stirred up trouble that would otherwise have been non-existent. That is nearly always a mistake.

No agitator can get very far unless behind him there is some cause for a grievance or for feeling that things are not right. That cause is not always justified. There may be a misunderstanding or something of that sort. But I think it is safe to say that a considerable proportion of the men at least must always believe, sincerely, that there is some real cause for complaint and grievance; or else your "trouble maker" and your "agitator" can't get very far.[1]

In 1916 a strike occurred in the refinery of the Standard Oil Company at Bayonne, New Jersey. The men submitted a list of grievances to the superintendent and asked for a conference. The communication was a petition and was couched in terms of utmost deference, almost of humility. It asked, among other things, that foremen be instructed to abstain from "brutally kicking" the workmen. The petition was disregarded and the superintendent refused to meet the committee. That brought matters to a crisis. The workers could be humble and be moved only to courteous petitions when brutally kicked by foremen, but when they knew of the cavalier action of their superintendent, something snapped. The refusal of the petition was on one day. On the next blood was flowing in the streets.[2]

[1] Bulletin of the Taylor Society, vol. vi, no. 1, February, 1921, p. 30.

[2] See *Survey*, vol. xxxvii, p. 61. "The Explosion at Bayonne."

When the coal miners in southern Colorado in 1913 drew up a list of grievances, they sent it to their employers; and officers of their union, in a courteously worded letter, asked the different operators for a conference. Not a single operator so much as acknowledged receipt of the letter. A week or so later, telegrams were sent to the operators. These also were disregarded. Then a strike was called, which lasted a year and two months, in the course of which there was more sustained violence and bloodshed, in all probability, than in any other strike that the country has ever known. The operators continued their policy of aloofness. They would not meet the union men; they would not sit in the same room with them, although one of the strike leaders had, the year before, at the request of the state legislature, sat down with the manager of the leading coal company and worked out a mining code for the state. At the very outset of the strike, therefore, the seeds of ill-will and bitterness were sown, and a corresponding harvest was reaped.

The Colorado situation was not unusual, nor peculiar to Colorado. The conditions existing in the non-union coal camps described in Chapter XI have served elsewhere to make strikes in these camps notorious for their violence. They begin with ill will on the side of the strikers because of the restrictions of the closed camp, and they begin with suspicion on the part of the employer. Neither side has any confidence in the other and both sides arm in anticipation of trouble. The employer has depended before on a private policeman, the camp marshal. Now he recruits a private army, mine guards who are armed and paid by the coal company and who receive deputy sheriff's commissions from the county sheriff. The strikers being also armed, the strike begins with two private armies

in the field, each awaiting and expecting an attack from the other. Under these conditions, bloodshed can hardly be avoided.[1]

BACKGROUND OF VIOLENCE

It is not to be supposed that every strike is a scene of carnage. Quite the contrary. Probably a majority of the strikes that occur are fairly peaceable affairs. In the course of a dozen years' experience as investigator, reporter, and editor, I have been at the scene of action of many strikes, but I have yet to see with my own eyes an act of violence in a strike. This is no indication that they do not occur. In some of the strikes investigated, violence was a marked feature. But it does show that a strike is not always and consistently a battleground.

Nevertheless, it is probably a fact that few strikes take place without some occurrence that would generally be characterized as an act of violence. The act in itself may be less serious than many a college hazing, but the circumstances and purpose of the act make it a more serious affair. As a matter of fact, a strike tends almost inevitably in the direction of some sort of aggressive or lawless action by one side or the other, often by both sides. The circumstances under which a strike takes place are of utmost importance. It either follows a conference in which the two sides have been unable to agree, or it takes place after one party or the other has refused to confer—a sure indication not only of disagreement, but of hostility. At best, therefore, a strike generally begins with each side thinking the other side arbitrary and unjust.

[1] This is a situation that requires treatment in connection with the whole subject of the policing of strikes, and will accordingly be taken up in chap. xiii.

At worst, the employer feels that his rights are about to be invaded by dangerous and reckless men, and the workers are smarting under the belief that they have been unjustly treated or bitterly wronged. The stage then is set for an act of aggression by one side or the other.

The striker's attitude toward the job and toward the strike-breaker was mentioned above. The employer's attitude is not altogether dissimilar. The business is his; the right to make decisions is his. The striker's feeling of resentment toward the scab is no greater than the employer's resentment over the presence of outside leaders, not his own employees, who are attempting to dictate to him concerning the conduct of his business.

With a state of mind like this on each side, it is not hard for either employer or striker to convince himself that he has ethical justification for using extra-legal methods in carrying on the struggle.

READING REFERENCES

BING, A. M.: *War-time Strikes and Their Adjustment.*

BROOKS, J. G.: *Labor's Challenge to the Social Order.*

BRUÈRE, ROBERT W.: "Following the Trail of the I. W. W." (Reprint from the N. Y. *Evening Post,* 1918).

FOSTER, WM. Z.: *The Great Steel Strike.*

HUNTER, ROBERT: *Violence and the Labor Movement,* chap. xi.

American Railway Union Strike (Pullman Strike). Report on Chicago Strike of June-July, 1894. Senate Ex. Doc. 7. 53d Congress, 3d Session.

Conditions in the Coal Mines of Colorado. Hearings before a subcommittee of the Committee on Mines and Mining. House of Representatives. 63d Congress, 2d Session, 1914.

Conditions in the Paint Creek District, West Virginia. Hearings before a subcommittee of the Committee on Education and Labor, U. S. Senate, 63d Congress, 1st Session, 1913.

Homestead Strike. Testimony before Congressional Investigating Commission. Misc. Doc. No. 335. 52d Congress, 1st Session, 1891. Report of Congressional Committee, H. Rep. No. 2447. 52d Congress 2d Session, 1892.

Industrial Commission, vol. viii (1901). Report on the Chicago Labor Disputes of 1900, with especial reference to the disputes in the building and machinery trades.

Industrial Conditions and Relations in Paterson, N. J., 1913. U. S. Commission on Industrial Relations, Final Report and Testimony. Vol. iii, pp. 2411-2645.

Labor Disturbances in the State of Colorado, 1880-1904, by Carroll D. Wright, January 27, 1905. Senate Doc. No. 122, 58th Congress.

"Law and Order—The Issue in Colorado," by John A. Fitch, *The Survey,* December 5, 1914, p. 241.

Miners' Strike in Bituminous Coal Fields in Westmoreland County, Pennsylvania, 1910-1911. Report by W. B. Palmer, June 22, 1912. Labor Bureau. H. Doc. 847. 62d Congress, 2d Session, v. 97.

National Erectors' Association and International Association of Bridge and Structural Ironworkers, by Luke Grant. Report of U. S. Commission on Industrial Relations, 1915. Chap. xviii, "The Dynamite Campaign and Its Effects." Chap. xix, "Why the Resort to Dynamite?"

Report on Strike at Bethlehem Steel Works, South Bethlehem, Pa. U. S. Commissioner of Labor, Report of May 4, 1910. 61st Congress, 2d Session. Senate Doc. No. 521.

Report on the Steel Strike of 1919. Commission of Inquiry, The Interchurch World Movement, 1920.

Strike of Textile Workers in Lawrence, Mass., in 1912. U. S. Commissioner of Labor, Report of 1912. 62d Congress, 2d Session, Senate Doc. No. 870.

"Westmoreland Strike," by Harrison and Kellogg. *The Survey,* December 3, 1910, pp. 345-366.

West Virginia Coal Fields. Hearings before Committee on Education and Labor, U. S. Senate, 67th Congress, 1st Session, 1921.

PART III
UNREST AND THE GOVERNMENT

CHAPTER XIII

THE POLICING OF STRIKES

STRIKES are matters of concern to governments as well as to private individuals. Many a strike has engaged the attention of all three of the principal branches of government—legislative, executive, and judicial. Most strikes fail of attracting such widespread attention, but all unite in arousing the interest of at least one agency of government—the one concerned in the preservation of order. The police department has a duty to perform in connection with large gatherings of people, however legitimate and orderly. Wherever there are throngs of people traffic needs direction; and there is need of protection against pickpockets or other petty criminals. Consequently, the police are in evidence at baseball games, at horse races, county fairs, on crowded street corners, and in or about railway stations.

There are additional reasons, however, for the presence of policemen in a district affected by a strike. The crowds who gather are not in a holiday mood. Their objectives may be legitimate in every respect, but there is a tenseness in the atmosphere suggestive of trouble. There is a hostile spirit abroad that may at any time, by the commission of other legally justifiable acts, such as the importation of strike-breakers, lead to breaches of the peace. Furthermore, the history of industrial disputes includes

many cases of disorder of a serious nature. Consequently, it is only an act of good judgment on the part of the authorities to keep a watchful eye on the situation and to arrange for adequate patrolling of any district where a strike is in progress.

The purpose of policing a strike, therefore, is to preserve the peace and to protect anyone needing protection in the possession of his full legal rights. It is improper for the policing authorities to interest themselves in the slightest degree in the controversy itself, or to do anything for the purpose of influencing the outcome of the struggle. It is the failure at times to maintain this attitude of impartiality which brings the subject of policing into a discussion of unrest. Public officials and peace officers have sometimes engaged in activities having nothing to do with their duties and having as their objective the making or breaking of the strike.

There are cases also where the local government bodies concerned have failed to supply adequate protection to property. Because of this failure there has grown up the practice of hiring private policemen to look after property and prevent aggression. These officers are usually deputized by county or municipal authorities, but they are hired and paid by private corporations, and receive orders from them. In a strike these men are partisan. They consider it their business to help break the strike. They are consequently so obnoxious to the strikers that their very presence is often an invitation to a breach of the peace.

In this chapter both types of policing, public and private, are to be discussed from the standpoint of their influence on industrial unrest.

GOVERNMENT POLICE [1]

There is always danger of partisanship on the part of the police when engaged in strike duty. That tenseness of feeling mentioned above as existing among the strikers is apt to communicate itself to the policing force. At best the police are not trained diplomats. When they are called upon to handle situations requiring the maximum of tact some one is apt to blunder. They may arouse resentment by the exercise of their authority; the consequent interchange of epithets creates a hostile feeling that is apt to grow.

Furthermore, even under the best conditions, the circumstances are such as to create an atmosphere of antagonism somewhat like that existing between pupils and a schoolmaster who thinks boys are naturally bad. The police are present as a disciplinary agency. It is their business to direct traffic, to keep crowds moving, to suppress disorder of every sort. The people who are likely to collect in crowds, to block sidewalks or streets, to manifest an exuberance that might be harmless at other times, but may be dangerous with so many people about, are the strikers. When anyone is ordered to move on it is apt to be a striker who is thus admonished. The striker therefore becomes selfconscious and imagines that every policeman is after him. This feeling grows rapidly into resentment and sullen hostility, an attitude which is felt and reciprocated by the police. Thus the tendency is for the striker to think of the policeman as his natural enemy

[1] The term "police" as here used is intended to cover all agencies of government acting in that capacity, whether city police, county sheriffs and deputies, National Guard, State Constabulary, or U. S. army.

and for the policeman to think of the striker as a general nuisance and a probable lawbreaker. This condition is intensified wherever there is a racial or religious cleavage between the two groups.

The influences at work, therefore, at the very beginning of a strike are rather in the direction of creating hostility between strikers and police. It does not follow that the police become active partisans of the employer. In very many cases the influences that are destructive of neutrality are successfully resisted, and admirable police work is done. But there are other influences at work as a result of which it frequently happens that, consciously or unconsciously, the police become actively partisan in behalf of the employer involved in the strike.

To be sure, there are examples of partisanship in behalf of strikers. This may occur when a community made up to a large extent of wage-earners is strongly organized. In such a case the public officials are apt to be union men or union sympathizers. Occasionally even where this is not the case there may be an official in a strategic position who is inclined to favor the labor side in a controversy and who communicates his attitude to the policing force. Thus Governor Hunt of Arizona, during the strike of copper miners in the Clifton-Morenci District in 1916, issued orders to the militia to prevent the importation of strike-breakers. Mayor Davis of Cleveland gave similar instructions to the police during the steel strike in 1919.

It must be recognized, however, that the employer is in the better position, from the standpoint of winning official support. Ordinarily he is the more powerful, influential, and permanent factor in the struggle. The police, in addition to their profound respect for persons in positions of authority, hesitate to offend those who may be in a

position to exercise a commanding influence in community affairs. The strikers do not represent anything so well established. Their influence or power, however great to-day, may be negligible to-morrow.

Another factor which tends to develop partisanship is the acceptance of favors at the hands of the employer by the policing force. This is something which is most apt to occur where a State Constabulary or the National Guard has been thrown into the field to supplement or take the place of the regular police. Coming as they ordinarily do from other points, these men are in possession of no conveniences in the way of living or office quarters. Frequently the employing company against whom the strike is directed places its offices and its buildings at the disposal of the soldiers. Cots may be set up and floors of office buildings or factories turned into dormitories. Headquarters and office facilities are provided for the officers in company buildings; automobiles are placed at their disposal. These facilities are often gratefully accepted, for the need of the policing force is immediate and great.

Their acceptance does not imply that they are going to be paid for in the form of special favors that will help break the strike. Such an arrangement, however, places the policing force under obligations to the employer and it may later on create a difficult and embarrassing situation when in a crisis a decision is to be made between neutrality and partisanship. Probably the more serious effect of it, however, from the standpoint of industrial unrest, is the impression made upon the strikers when they see officers and soldiers making full use of the equipment of the company against whom they are on strike, going about in its automobiles, conferring constantly with its

officers, and in every way, so far as the strikers can see, comporting themselves as the armed retainers of that employer.[1]

Occasionally employers have made definite efforts to secure the adherence of the police to their side of the controversy by offering rewards for services rendered or to be rendered. In a previous chapter reference was made to a factory superintendent who paid the policeman on the beat $35 a week as long as the strike was in progress. Evidence of this sort of thing is naturally difficult to obtain. There have been a number of occasions, however, where significant action has been taken at the close of a strike by the employing interests concerned in it. Contributions to the police benefit fund have sometimes been forthcoming. At the close of the steel strike in 1919-20 it was reported in Pittsburgh papers that one of the steel companies involved had made special payments of $150 each to the policemen who had patrolled the district where one of its plants is located. At the same time it was reported that a high police official of the city of Pittsburgh had asked for and had been granted a retirement on half pay, and had immediately accepted a position as the head of the mill police of one of the prominent steel companies.[2]

[1] Of all the policing agencies which are called upon at times to take charge of a strike situation, the one achieving the highest degree of neutrality is undoubtedly the United States army. It is noteworthy that the army does not ordinarily avail itself of the facilities mentioned above. So far as the writer is aware, it is invariably the practice of the United States army, when called into a strike situation, to provide its own equipment, including tents for the occupancy of the soldiers. Thus it is dependent upon neither of the contending parties and is in a position to maintain as nearly an impartial attitude as is humanly possible.

[2] Pittsburgh *Dispatch*, January 18, 1920.

EXAMPLES OF PARTISANSHIP

There is no account of labor troubles in existence containing a more amazing revelation of violence and crime than a report on conditions in Colorado, prepared in 1905 by Carroll D. Wright, Commissioner of Labor of the United States. This document, entitled "A Report on Labor Disturbances in Colorado from 1880 to 1904, inclusive," contains an account of thirteen strikes, all of which were accompanied by disorder and in ten of which the militia were called out for strike duty. The report shows that on several occasions during this period non-union men were run out of mining camps by union men, and union men were deported by so-called citizens' organizations, dominated by the mine owners. In the strike of metal miners in 1903-04 strikers to the number of several hundred altogether were deported at different times from Telluride and Cripple Creek by the militia, under the direct orders of Sherman Bell, Adjutant-General. One group were put over the state line into Kansas, another was sent to New Mexico, and others were sent to various parts of the state. No summary of this report can adequately reveal its contents, and the reader is referred to the report itself as one of the most complete and accurate portrayals of industrial controversies where partisanship reigned supreme.[1] The influence of that earlier period is still to be felt in Colorado.

In the strike of coal miners in Westmoreland County, Pennsylvania, in 1910, members of the State Constabulary and deputy sheriffs openly opposed the strikers. The deputies did so as a matter of course, for they were on

[1] U. S. Senate Doc. 122, 58th Congress, 3d Session, January 27, 1905.

the payroll of the companies. The Constabulary interfered with meetings of the strikers and harassed them as they marched upon the highway to their place of meeting. On one occasion they compelled a group of marching miners to furl the American flag, which they were carrying at the head of the procession.[1]

A strike of textile workers in Little Falls, New York, occurred in the fall of 1912, as a protest against a wage reduction of 10 per cent. A study made by the New York Bureau of Labor Statistics showed that just prior to the cut the weekly wage of about half the men employees was $9 or less, and that half of the women were receiving $7.50 or less each week. This strike attracted wide attention on account of the attitude of the police. Meetings of strikers were broken up and prominent men who attempted to address them, including the Mayor of Schenectady, were arrested and sent to jail. Assaults were made on strikers at night and organizers were arrested on trumped-up charges or on no charges at all, and in some cases held in jail without being allowed access to counsel. An attempt was made by the police to close up a soup kitchen where strikers were being fed. Some of these activities were abated when the attorney-general of the state gave out an opinion that the constitutional guaranty of freedom of speech and of assemblage included meetings of strikers.

In 1913 there was a strike of silk-mill operatives in Paterson, New Jersey. In the first twelve weeks of the strike more than 1,000 strikers were arrested on various charges. Despite this showing, I was personally assured by the chief of the Paterson police force that the

[1] Shelby M. Harrison and Paul U. Kellogg, "The Westmoreland Strike," *The Survey*, December 3, 1910, p. 345.

strike was one of the most peaceful on record, that up to that time no one desiring to return to work had needed police protection, and that not a single case of assault on a worker by a striker had come to the knowledge of the police.[1]

One incident was the arrest of William D. Haywood and Adolph Lessig, two of the strike leaders. A meeting had been arranged to be held in the open on a Sunday afternoon. When Haywood arrived to take charge of the meeting he was informed that the chief of police had forbidden the holding of the meeting. Haywood proposed, therefore, that those who had assembled should go on foot to a point outside the city limits and there hold the meeting. This suggestion was accepted, and Haywood and Lessig set off in the direction of the spot that had been agreed upon, a fairly large crowd of people trailing along after them. When they were within a short distance of the city limits, Haywood and Lessig were arrested and at the police station were charged with disorderly conduct and unlawful assemblage. They were found guilty in police court and were sentenced to six months' imprisonment. The case was taken before a Supreme Court justice on a writ of *certiorari*. After considering the evidence, the justice ordered the men released, remarking that he not only found no violation of law, but that the two men were co-operating with the police department and carrying out their orders at the time of arrest.[2]

Early in 1919 there was a strike of textile workers in Lawrence, Massachusetts. As in 1912, the date of the previous strike of similar importance at that point, addi-

[1] John A. Fitch, "The I. W. W., an Outlaw Organization," *The Survey*, June 7, 1913, p. 355.
[2] *The Survey*, April 19, 1913, p. 82.

tions were made to the police department. As in 1912, also, there were many complaints concerning the conduct of the police.[1] In the 1919 strike the authorities refused the strikers the right to hold outdoor meetings. Competent observers described wanton attacks at various times upon groups of strikers. I visited Lawrence at that time and talked with strikers whose heads were bruised and cut and who claimed they had received their injuries at the hands of the police. One ex-soldier claimed to have been beaten in a cell in the jail. I asked a police-court attendant about this and he denied it, saying, "They don't beat them here; they do that in the street."

At one time a group of professional men and women from Boston, came to look the situation over and understand, if they could the causes of the strike. They were met at the railway station by policemen on horseback, who set upon them, scattered them, insulted the women and threatened the men, beating some of them with their clubs and compelling some to return to the station and leave town. The police official directly in charge of the officers on strike duty considered the strikers so completely the enemies of society and of himself personally, that he adopted an attitude of bitter hostility toward persons interviewing him whom he knew to have interviewed the strike leaders.[2]

The steel strike of 1919-20 is replete with instances of police aggression. There have been few strikes where the policing authorities so completely ranged themselves on the side of the employing companies as did the local

[1] Regarding the 1912 strike, see "Right of Free Speech in Lawrence," by Owen R. Lovejoy, *The Survey*, March 9, 1912, p. 1904.

[2] See John A. Fitch, "A Strike for Wages or for Bolshevism," *The Survey*, April 5, 1919, p. 42.

police and the State Constabulary of Pennsylvania in the Pittsburgh district during the progress of the steel strike. Testimony given before the Senate Committee on Labor investigating the steel strike was to the effect that strikers were harassed and interfered with constantly, that they were frequently arrested when conducting themselves in an orderly fashion, and in many cases confined in steel-company buildings pending transfer to police headquarters or to jail. Evidence of the most unquestioned sort exists showing that strikers were beaten on the street, in public buildings, and even in their homes, by police officials. The situation was so tense that in one of the mill towns, when I asked a group of men standing on the street to direct me to strike headquarters, at a point, as I later discovered, within a block of the place I was seeking they denied all knowledge of the whereabouts of the union office or even of the existence of the strike. In this town also I was spied upon by plain-clothes men and decoyed into police headquarters by one of them. When I furnished convincing evidence of my identity as a reporter the police officer explained that his interest was due to the fact that I was a stranger and he did not know but that I might be a union organizer!

It is both impossible and unnecessary further to review the situation during the steel strike. The evidence is available to anyone who cares to read it.[1]

These are a few instances presented without any effort at an exhaustive study, but presented merely because I happen to be familiar with them, which show that there

[1] Investigation of Strike in Steel Industries, Hearings before Committee on Education and Labor, U. S. Senate, 66th Congress, 1st Session. Report of Interchurch World Movement on the Steel Strike, pages 239-242; "Closed Towns," S. Adele Shaw, *The Survey*, November 8, 1919, p. 58.

is a real tendency at times on the part of the policing officials to regard the strikers as their enemies and to think of their duty as tending in the direction of breaking the strike. It was pointed out above that to a certain extent this tendency is natural. It is one that is greatly intensified when government officials are themselves company officials or relatives or friends of company officials. When the steel strike of 1919-20 began, for example, the Mayor of Bethlehem, Pennsylvania, was a vice-president of the Bethlehem Steel Corporation; the Mayor of Duquesne, a steel town near Pittsburgh, was a brother of a steel-corporation president; the sheriff of Allegheny County was a brother of a mill manager; the burgess of Clairton, one of the steel towns in the Pittsburgh district, was chief clerk of the Carnegie Steel Company; the burgess of Munhall was a mill superintendent.[1] When these officials issued orders prohibiting meetings of strikers and directing the police to prevent such meetings, a severe blow was dealt to the respect of the strikers for the government under which they lived. When they read the proclamations of public officials forbidding them to take action ordinarily legal and necessary for carrying on a strike, and saw that the persons issuing the orders were also officials of the companies against which they were striking, they knew, of course, that these men were but masquerading for the moment in the guise of impartial administrators of the law, and they could not feel that their government was truly representative. They could not think of it as anything but the private property, for the time at least, of their employer.

Sometimes the zeal of public officials is so great that even when there is no strike they are hostile to labor

[1] Cf. Interchurch Report on the Steel Strike, p. 172.

leaders whom they consider "radical." An example of lawbreaking by a public official of this sort is contained in a newspaper dispatch from Colorado:

Forcible ejection from Colorado by state rangers yesterday of William Z. Foster, leader of the big steel strike two years ago, and nationally known labor organizer, was "for the best interests of the state," and "no law was consulted," Adjutant-General Hamrock said today.

Foster, who was characterized as a "dangerous radical" by the Adjutant-General, was taken from a hotel after his arrival from Salt Lake City, placed in an automobile, and escorted to the Kansas state line, General Hamrock announced. It had been reported that he was placed on a train there.

Foster told the rangers his mission here was "legitimate," but he offered no physical resistance. A grip which he carried, said to contain radical literature, was seized and its contents confiscated.

Foster, who is alleged to be the president of the Society of Friends of Soviet Russia, was denounced by the Adjutant-General, who said: "We have characterized him as an undesirable in Colorado, and we decided to have him keep right on going without any stop in Denver."

General Hamrock said he had been informed that a secret meeting of those interested in the society was to have been held here last night.[1]

EXTRA-GOVERNMENTAL POLICING

Impartiality as between employer and striker is a difficult thing to achieve, even when the policing force is made up of public employees. It is much more difficult when they are the employees of the corporation against whom

[1] N. Y. *Times*, August 8, 1922. See also "The Strange Case of Mr. Foster," *New Republic*, August 30, 1922, p. 17.

the strike is directed. It becomes necessary, therefore, to call attention to the existence and the activities of the private armed guard.

The development of the private-guard system has come about in a natural and logical way. The guard system has its origin in a practice as innocent as the hiring of a watchman to protect private property, such as tools and material piled about on a construction job. The point where a watchman ceases to be that exclusively and becomes a guard is the point where there are added to his duties of protecting property more general policing functions. Thus there has developed in large industrial establishments, such as steel plants, a complete inside police system. These men are uniformed and armed and have authority to make arrests on the property of the company. They are scattered about through large industrial plants, not alone to protect the property, but to answer questions, direct traffic to a mild degree, particularly in the sense of directing or guiding visitors through the plant, and to prevent disorderly conduct on the part of individuals within the plant. It can readily be understood that when thousands of men are employed in a single plant or series of mill buildings, it may be a convenience and a necessity to have individuals on hand to perform the same functions within the plant that a policeman would perform in the street: look after disorderly persons, summon the ambulance in case of accident, etc. These inside guards are usually given commissions as deputy policemen by the municipality in which the plant is located. Their police authority is usually limited to the grounds of the company. Such men have been mobilized during strikes for the purpose of repelling invasions of strikers, and have occasionally been used in the street outside of the plant

for this purpose. Ordinarily, use of these guards outside of the plant is illegal, and as a matter of fact they are seldom so employed.[1]

The theory of allowing an industrial corporation to patrol its own property seems to be that the public interest is not involved to any very great extent, the interests to be conserved being almost altogether those of the corporation or firm concerned. There is, however, another type of guard who, as contrasted with those who are limited by the walls of a plant, may be termed an outside guard. The principal employers of outside guards are railroad and mining corporations. On the railroads these men are scattered over widely separated areas. Their activities are generally limited to company property in that they are employed almost altogether upon the company right of way. They come in contact with the public, however, as men inside a plant do not. These men are usually thought of and described as detectives, and their employment is usually justified on the ground that the property of the company is exposed to the operations of sneak thieves. It is the duty of these detectives not only to prevent the theft of company property, but to follow up and run down those who have committed such depredations. It is obvious that work of this sort needs to be done. The fact that the company employs its own men to do it is an indication that adequate policing is not provided by the public authorities.

The situation in the coal mines is somewhat different. Coal-mining property is usually located at a distance from centers of population. Valuable minerals are often

[1] An example of their employment to break strikes is given in chap. x, in the account by Sherman Service of its own activities.

discovered in remote and rugged sections, where population is sparse, or almost altogether non-existent. The operator secures title to the property under which the minerals lie. As explained in Chapter XI, the operator is usually under the necessity of building houses [1] on his own property, and therefore, finds himself the owner of a private town, with all the aspects and most of the problems of a small village, but without self-government. The farmer who builds a house near his own for the occupancy of a hired man and his family does not thereby become the founder of a municipality. The situation of a mine operator who builds forty or fifty houses is the same as that of the farmer, except that he is operating on a larger scale. Having property to protect, the operator hires some one to act as a watchman. It is convenient to have him combine with these activities those of peace officer. We usually find, therefore, in the typical mining camp, an individual designated as the camp marshal, as completely an employee of the operator as any miner in the camp, receiving his pay and taking his orders from the operator, but holding a deputy sheriff's commission and having the authority to make arrests.

It has been shown in a previous chapter how the mining operator who wishes to prevent a union from growing up in his camp takes advantage of the control that ownership affords, and excludes union organizers. This is accomplished through the agency of the camp marshal. Long before organization is effected, therefore, and before a

[1] "The coal-mining companies provide them houses just as they provide schools, churches, protection, and other adjuncts of civilized communities, because *there is nobody else to do it.*" From "Coal Facts No. 3," a pamphlet issued by Logan District Mines, Information Bureau, 508 Charleston National Bank Building, Charleston, West Virginia.

strike is contemplated, the camp marshal is likely to have experience in opposing the activities of organizers and has opportunity to develop the idea that the unions and union men are his enemies. If a strike does occur in such a camp, it is a simple matter to increase the number of private policemen. The county sheriff being thoroughly accustomed to the idea of deputizing men so employed in the mines, and often having been elected as a result of the favor and assistance of the coal companies, issues deputies' commissions to these new employees. We find, then, in times of strikes, a little posse of deputy sheriffs in each mining camp known as mine guards, paid by the operator, taking their orders from him, and prepared to resist invasions by force of arms.[1]

Out of the situation thus described there has come into being what may be termed the professional guard. Professional guards are usually employed by strike-breaking detective agencies. Such concerns recruit men for the service of employers, particularly in mining districts during strike troubles. Their business is to help break strikes and to do it, if necessary, by force of arms. Employees of one such agency have done duty not only in West Virginia, but in the copper regions of Michigan and in Colorado. Union officials who encountered them in the Paint and Cabin Creek strike in West Virginia in 1912 recognized the same men in 1913 opposing them in Colorado.

The effect of this system is the development of private armies. Responsible, impartial policing authorities being absent from the coal regions, there is usually a general resort to arms at the beginning of a strike. Each side feels that its rights will probably be invaded by the other,

[1] Cf. Lane, *Civil War in West Virginia*, chaps. vii and viii.

and thus we find at the beginning of a strike two armed bands of men viewing each other with bitterness and hatred, ready to shoot on slight provocation. The guards are usually an irresponsible and reckless sort. Their occupation is not such as to appeal to most honorable and peace-loving citizens. They are hired to engage in a hazardous and sometimes a desperate enterprise, and after a little experience they come to look upon the unions as their natural enemy. The strikers, on the other hand, finding themselves confronted by a force of armed men who, with no personal quarrel with the strikers, nevertheless have undertaken for pay to help destroy their organization by force of arms, develop a bitter hatred of the mine guards. Given such a condition of affairs as this, it is not to be wondered at, but rather to be expected, that strikes in mining regions should be accompanied by bloodshed and miniature civil war.

I have tried to make it clear that the development of this system is not altogether a thing for which any particular group of persons is responsible. In any given case the responsibility may be direct and personal, but as a system it has grown up on account of the necessity for policing of some sort in remote regions where the public has not provided it. The result of the system, however, is the development of an irresponsible extralegal form of warfare which cannot be viewed by anyone with respect for law and order with anything but grave concern. It is important to observe that the system may be extended. While there has not yet been civil war between railroads and striking employees, testimony given before the Industrial Relations Commission by W. W. Atterbury, general manger of the Pennsylvania Railroad, and by S. C. Long, another official of the railroad, shows

how easily it would be possible for these corporations to throw a fighting force into the field. This testimony showed that not only are hundreds of men employed as detectives and guards, but that arsenals exist at different points on the system containing large quantities of rifles and ammunition. It would be possible for a railroad so equipped to mobilize on short notice a formidable army, a thing which would be as detrimental to public welfare as any of the private forces controlled by the barons in the days of feudalism.[1]

William B. Wilson, during the eight years that he was Secretary of Labor, repeatedly recommended in his annual reports that Congress enact legislation prohibiting the establishment of a private guard system. It is clear that the existence of such a force is a menace to industrial peace and a direct cause of unrest, suspicion, and ill will. The responsibility of the public, however, is twofold; not only to abolish the system, but to provide in its stead adequate protection for private property and individuals at points where they are subject to danger.

READING REFERENCES

See end of Chapter XII.

[1] Cf. Hunter, *Violence and the Labor Movement*, chap. xi, "The Oldest Anarchism."

CHAPTER XIV

LEGISLATURES AND COURTS

IMPATIENCE with Congress because of its record in labor legislation was a marked feature of the report of the Executive Council of the American Federation of Labor for the year 1922. A concluding paragraph of the report on this subject says that:

More than 400 bills have been introduced in the 67th Congress which directly or indirectly affect labor. Ninety per cent of them are inimical to the interests of labor and the people. . . . The result has been that 99 per cent of the work done by labor in Congress has been to defeat pernicious legislation. There is little sentiment in favor of beneficial legislation. This is so apparent that the statement is often made that if the United States Capitol could be transported to the England of the fifteenth century, half the members of Congress would be "to the manner born." [1]

The importance to organized labor of acts of Congress and of the state legislatures is impressively indicated by this statement. It indicates, too, that whatever theories may be held as to the relative importance of political and industrial action, the former cannot be ignored. Even if organized labor preferred to direct its activities solely to the achieving of victories on the industrial field, it would have to give attention to the legislative bodies, be-

[1] Proceedings, 42d Annual Convention, American Federation of Labor, p. 115.

cause of the possibility that legislation hostile to the labor interests might be proposed.

But the interest of organized labor in legislation is, as a matter of fact, positive as well as negative. In a long list of bills before the 67th Congress, to which reference is made in the report of the Executive Council of the American Federation of Labor quoted above, it appears that among those favored were bills affecting the pay and working conditions of public employees, restricting immigration, attacking the problem of unemployment, providing compensation for accidents in the District of Columbia, and strengthening the federal Department of Labor. In addition, there were certain measures of more general application, including laws favoring the interests of farmers, maternity protection, the curbing of trusts, and laws for the promotion of education.

Bills opposed by the Federation included proposals injuriously affecting public employees, letting down the immigration bars, limiting the rights of unions, and other matters of more general application, including the sales-tax and ship-subsidy bills.

The attitude of the Federation on these bills indicates the general subject matter of its interest. Representing consumers, it is concerned with a wide range of subjects in which citizens generally are also interested. Within the more limited scope of their interests as wage-earners, unions are in favor of laws affecting the contract of employment of public employees. They favor, for workers generally, some form of protection against the hazards of unemployment, accident, ill health, and old age, and more insistently than anything else they favor legislation insuring to the unions freedom of action.

At one time organized labor favored a considerable

amount of governmental interference with the labor contract, and some elements in the labor movement even favored compulsory arbitration. There was a good deal of support of legislation affecting hours and wage payments. Now, organized labor, as expressed by the American Federation of Labor, is opposed in general to wage and hour legislation except as it affects women and children and government employees. In the field of protection against industrial hazards, sentiment in favor of legislation is steadily growing. But the big issue now from the union point of view is the legal status of the organizations. Here we find the fight being waged with greatest intensity; against laws that hamper union activity, like the Kansas Industrial Court law, and for legislation that will make possible the utmost of freedom. From this development we see clearly enough that while the unions recognize the need of some help from the legislature, they are more interested in what they can accomplish directly on the industrial field.

This very general statement indicates the field in which legislation is sought by the unions. It cannot be said that great success has yet attended their efforts. Many of the laws that have been finally placed on the statute books have been enacted only after years of struggle. Many proposals of legislation have been defeated, and some laws passed by the legislatures have been declared unconstitutional.

With respect to legislation affecting wages and hours, the greatest success has been achieved in securing protection for public employees. Eight-hour laws are fairly general in this field. Less has been accomplished with respect to wage protection. Progress of legislation for the

protection of women [1] and children [2] has been surprisingly slow, considering the fact that there is such general acquiescence in the necessity for them. Because of the inadequacy of the child-labor regulations in many states, and the impossibility of regulating interstate commerce through state legislation, advocates of child-labor laws have in recent years turned to Congress. In succession, two child-labor laws were passed, each of which was in turn declared unconstitutional by the Supreme Court. Only twelve states have passed minimum-wage laws.[3] A mere handful have adequately limited the hours of employment of women, and still fewer have prohibited night work. It goes without saying that very little has been done in this field for men.

In most of the industrial states laws have been enacted

[1] Laws regulating the time of employment for women appear in some form or other in most of the states. Daily hours of labor are limited in 44 states as follows: 8 hours, 9 states; 8½ hours, 1 state; 9 hours, 13 states; 10 hours, 17 states; 10¼ hours, 1 state; 10½ hours, 2 states; 11 hours, 1 state; no limitation, 4 states. Night work is prohibited in certain occupations in 13 states; 12 states require a day of rest; in 14 states the law requires that a period for meals be allowed, ranging from thirty minutes to one hour; in 12 states there is a regulation limiting the number of hours that may be worked without either a meal period or a rest period; 12 states have enacted minimum wage laws for women.

[2] Most of the states prohibit the employment of children under 14 years of age in gainful occupations and the tendency is to raise the age limit. It is 16 in many states for certain specified occupations. In Utah there is no age limit for factory work. Daily hours of labor for children under 16 is limited to 8 in many states. There are 11 states, however, in which a longer day is permitted, the limit in 6 states being 10 hours, in one state 10¼, and in one state 11.

[3] And these are now of doubtful validity in view of the decision of the U. S. Supreme Court which declared unconstitutional the minimum-wage law of the District of Columbia, Adkins *et al., vs.* Children's Hospital, 261 U. S. 525.

designed to promote the safety of industrial workers. These laws are enforced with varying efficiency, and in most states they are not yet adequate to meet the situation. Almost nothing has been done about unemployment. Social insurance in this country is represented almost exclusively by the laws providing compensation for accidents. There is a beginning of maternity insurance and old-age pensions, but illness, invalidity, and unemployment have not so far been recognized in our laws as hazards from which the worker should be so protected.

Laws for the protection of union membership have been passed in a number of states, forbidding an employer to discharge a worker on account of union membership. The other form of protection sought by the unions has been in the form of legislation curbing the power of the courts in the issuance of injunctions, and legislation defining the legal rights of trade-unions. All of the first class of laws have been declared unconstitutional, and those of the second group, with the exception of a single clause in the Clayton Act,[1] have either been declared unconstitutional or have been nullified by interpretation.

From the foregoing, it appears that progress in the form of legislative enactment has been slow and difficult. It is easy and natural to assume that in consequence irritation and dissatisfaction with the legislatures is widespread. No doubt there is such a feeling, but it is possible to overemphasize the point. There is no way of estimating the reaction of the non-union wage-earner, but, despite the lack of any conscious acceptance of a syndicalistic philosophy, most American unions are far more concerned over industrial than they are over political action. The American Federation of Labor is on record as oppos-

[1] Michaelson *vs.* U. S. *ex rel.* Ry. Co., 69 L. ed. 14.

ing legislation fixing hours of labor for men. It is opposed to minimum-wage laws for men. In general its attitude is one of hostility to legislation affecting matters that are involved in the contract of employment, though it has manifested a sort of negative approval of protective legislation for women and it is actively in favor of child-labor laws.

The distrust of the legislature, which really does exist among the American unions, is due to other causes, of which two are the most important. On the one hand there is a fear, based on experience, that the legislature will pass laws believed to be inimical to the interests of labor, such as compulsory-arbitration legislation. An expression of this attitude is clearly set forth in the quotation at the beginning of this chapter. On the other hand, there is suspicion and resentment because of the failure of the legislatures to pass laws establishing full freedom of activity for the unions. Since it is widely believed, as indicated above, that industrial action is more important than political, one must recognize the extreme importance from the union point of view of this class of legislation.

CONSTITUTIONALITY OF LABOR LAWS

So far as legislation itself is concerned, the problem confronting American trade-unionism is not essentially different from that before the union movement in most of the other countries, but in one respect the American problem is more difficult. One more hurdle has to be taken in America than is generally the case elsewhere before a law is safely a law. That hurdle is our system of written constitutions. It has been charged that the courts have indicated their lack of sympathy with the wage-

earners by declaring protective labor legislation unconstitutional.[1] That is a charge that can stand only if the decisions have been arbitrary and obviously unjust. No one can reasonably object to the setting aside of legislation that plainly exceeds constitutional limitations. There are critics, it is true, who maintain that our courts have never been granted the power to declare laws unconstitutional and that their action in doing so is a usurpation of power.[2] But that is a different charge and carries no implication that legislation ought not somehow to meet the test of constitutionality.

It is the necessity for meeting this test which creates an atmosphere of doubt concerning the power of the legislatures to pass any particular piece of social legislation. This doubt may be dispelled by a series of decisions, including a decision by the Supreme Court of the United States. This takes time, however, and as a result of adverse decisions or conflicting decisions, many subjects of legislation are still in doubt. An interesting case in point is the question of the regulation of the length of the day's work for men. There was not much legislation on this subject until the 'nineties. Then, in a number of states, laws were passed limiting the hours of labor for coal miners to eight. A Utah law on this subject was upheld by the Supreme Court of Utah, and after an appeal to the Supreme Court of the United States was there up-

[1] U. S. Commission on Industrial Relations, Final Report and Testimony, vol i, pp. 42-46.

[2] Gilbert Roe, "Our Judicial Oligarchy." Hon. Robert M. LaFollette, address before 42d Annual Convention, A. F. of L., Cincinnati, Ohio, June 14, 1922; Convention Proceedings, pp. 232-243. Hon. Walter Clark, Chief Justice Supreme Court of North Carolina, U. S. Commission on Industrial Relations, Final Report and Testimony, vol. xi, p. 10457.

held.[1] The court held that miners are subject to peculiar hazards, including danger to their health on account of breathing impure air underground, and that a limitation of their hours of work by the legislature is justifiable under the police power.

A few years afterward a law was enacted in the state of New York limiting the hours of labor of employees in bakeshops to ten a day. This also was carried up to the Supreme Court after it had been upheld as a valid law in the New York Court of Appeals. It was declared unconstitutional by the Supreme Court. The Court was of the opinion that the business of baking bread was not essentially dangerous, and ruled, therefore, that an attempt to place a limit on the number of hours that men might work in that industry was beyond the power of the legislature. This was the famous Lochner case.[2] After this decision very little legislation was proposed for the limitation of hours of work for men, excepting for workers in interstate commerce. The outstanding case in this field is the one involving the Adamson Law, passed in 1916, which established a basic eight-hour day on the railroads. The constitutionality of this law was upheld by the Supreme Court of the United States as a regulation of interstate commerce and as such within the power of Congress.[3] The only other case of importance in this field involves a statute of the state of Oregon which provided that no one should be employed in manufacturing establishments for more than ten hours a day, but permitting overtime at increased rates of pay up to thirteen

[1] Holden *vs.* Hardy, 169 U. S. 366 (1898).
[2] Lochner *vs.* New York, 198 U. S. 45 (1905).
[3] Wilson *vs.* New, 243 U. S. 332 (1917).

hours. This law was upheld by the Supreme Court of the United States.[1]

This series of decisions leaves in doubt the power of the legislature to enact any law seriously interfering with the length of the working day for men. Holden *vs.* Hardy, and the Lochner case refer each to a single industry. One is favorable to the law, the other is opposed. The Bunting case was favorable, and the law applied to all manufacturing establishments, but it was so broad in its terms as to constitute no real limitation.

A somewhat similar condition of affairs existed for a good many years with respect to the limitation of hours for women. An Illinois law restricting the labor of women to eight hours a day was declared unconstitutional by the Supreme Court of Illinois in 1895.[2] For a number of years after this decision no legislation on this subject was brought to the attention of the higher courts. In 1908, however, a ten-hour law for women in Oregon was upheld by the United States Supreme Court.[3] In the meantime a new law had been enacted in Illinois limiting hours of labor for women to ten per day. This was upheld in 1910 by the Supreme Court of the state.[4]

The net result of these decisions is that no one now questions the power of the legislatures to place some limit on the number of hours that women may be employed. The matter was so completely in doubt, however, that there was very little legislation on the subject from the time of the adverse decision in Illinois in 1895 until the decision of the United States Supreme Court in the Muller case in 1908. For a period of fifteen years in the

[1] Bunting *vs.* Oregon, 243 U. S. 426 (1917).
[2] Ritchie *vs.* People, 155 Ill. 98 (1895).
[3] Muller *vs.* Oregon, 208 U. S. 412 (1908).
[4] Ritchie *vs.* Wayman, 244 Ill. 509 (1910).

state of Illinois legislation on this subject was held up by a controlling opinion of the Supreme Court of the state.

With respect to laws prohibiting the employment of women at night, the situation is now equally clear. In New York a night-work law was declared unconstitutional in 1907.[1] In 1915, however, a similar law was upheld by the New York State Court of Appeals.[2] And this law was declared constitutional by the Supreme Court of the United States in March, 1924.[3]

The history of the trend of judicial opinion with respect to legislation for the protection of working women is interesting because of the importance of such legislation. But the most interesting thing about it is the light it throws upon the importance of presenting economic and social facts to a court that is about to pass on social legislation. The Supreme Court of the United States, when it upheld the Oregon ten-hour law for women, had before it a brief presented by Louis D. Brandeis, now a member of the court, then counsel for the Consumers' League. This brief contained, in addition to a legal argument, a summary of competent medical and lay opinion as to the evil effect of long hours, together with a mass of evidence from industry itself, supporting the opinions. Similar briefs have since then been presented in other cases involving the welfare of women. Their importance is clearly indicated in the two night-work cases in New York. The first one (People *vs.* Williams), which was argued on legal grounds alone, resulted in a decision holding the law unconstitutional. Eight years later another night-work law, similar to the one held invalid, was

[1] People *vs.* Williams, 189 N. Y. 131 (1907).
[2] People *vs.* Schweinler Press, 214 N. Y. 395 (1915).
[3] Radice *vs.* New York, U. S. Supreme Court, March 10, 1924.

brought before the court, and was upheld. In its opinion in this case (People *vs.* Schweinler Press) the court admitted that there was no real distinction as to constitutionality between the two statutes, but explained its former decision on the ground of "failure of counsel adequately to fortify and press upon our attention the constitutionality of the former law as a health and police measure, and to sustain its constitutionality by reference to proper facts and circumstances." Such facts were called to the attention of the court in the later case, and they were sufficient to bring about a reversal in the point of view of the court. These cases indicate clearly that where the police power is involved, it is as important to acquaint the court with the social need for the laws as it is to convince the legislature.

The power of the legislature to regulate the employment of minors is unquestioned. There are two recent decisions of the United States Supreme Court holding invalid congressional enactments having as their purpose the elimination of child labor. These decisions related only to the jurisdiction of the federal government, and did not in the slightest degree affect the power of the state legislatures to adopt regulations in this field.

Wage legislation is varied in character, and there is a good deal of it in the different states. Most of the regulations have to do with the manner and time of the payment of wages. Some of these regulations were held invalid at the beginning, but there are decisions both by the state courts and by the Supreme Court of the United States which now make clear the validity of such laws. Minimum-wage legislation is in a doubtful state. A case came before the United States Supreme Court with only eight members sitting, and they divided equally on the

question of constitutionality.[1] The result was to affirm the decision of the lower court, which had upheld the law. A new case involving the minimum-wage law of the District of Columbia has recently been decided by a vote of 5 to 3 against the validity of the law,[2] the personnel of the court having changed somewhat since the previous decision. This decision naturally calls in question the constitutionality of all similar state laws.

The standing of workmen's-compensation legislation is more certain. As a result of a series of decisions, it is now recognized that it is within the power of the legislatures to make laws requiring employers to pay compensation to injured employees, even where the injury is not due to the fault of the employer. The course of events leading up to the establishment of this principle, at least so far as the state of New York is concerned, throws interesting light upon the status of legislative enactments.

In 1910, after extended research by a commission authorized by statute and appointed by the legislature and the governor, the New York State legislature enacted a workmen's-compensation law. This law set aside the common law of employers' liability, based on fault, and required the payment of compensation to all workmen injured in the course of their employment, unless caused by willful misconduct. In due course an injury case involving this statute came up for adjudication in the courts. It went up to the highest court of the state, and the Court of Appeals, by a unanimous decision, held the law invalid as a taking of property "without due process of law." [3]

[1] Stettler *vs.* O'Hara, 243 U. S. 629.
[2] Adkins *vs.* Children's Hospital, 261 U. S. 525.
[3] Ives *vs.* South Buffalo Railway Co., 201 N. Y. 271 (1911).

The work of amending the constitution was immediately set on foot. A constitutional amendment in New York must be passed by two successive sessions of the legislature and then submitted to a referendum vote in the next general election. An amendment making possible the enactment of a workmen's compensation law was passed by the legislature in 1912 and again in 1913 and was adopted by a vote of the people in November, 1913. In December, 1913, a special session of the New York Legislature, called for that purpose, enacted a new workmen's compensation law in accordance with the amended constitution.

The experience of the state of Washington was quite different. A compulsory workmen's compensation law similar in principle to the New York law was enacted in that state. This law was reviewed by the Supreme Court of Washington shortly after the New York decision in the Ives case, and the court there upheld the law as a valid exercise of the police power. What was illegal and improper in New York was at the same time proper and constitutional in the state of Washington. Both the Washington and the second New York statutes were carried to the Supreme Court of the United States, and on the same day decisions were handed down upholding both.[1]

It was stated above that the more important thing from the union point of view in legislation is the right of individuals to belong to unions and the right of unions to make use of their economic weapons. There have been two decisions of the Supreme Court of the United States on the question of protecting the individual union member against discrimination. A federal law made it un-

[1] Mountain Timber Co. *vs.* Washington, 243 U. S. 219, N. Y. Central *vs.* White, 243 U. S. 188 (1917).

lawful for an officer of an interstate carrier to discharge an employee because of his membership in a labor union. This law was declared unconstitutional by the Supreme Court in 1908 [1] on the ground that it interfered with the freedom of contract of both employer and employee and constituted a taking of property without due process of law. In 1915 a similar decision [2] was handed down by the Supreme Court with respect to a Kansas law, which made it unlawful for an employer to require an employee to sign an agreement that he would not become a member of a labor organization. This law was declared unconstitutional on the same line of reasoning as in the Adair case.[3]

Efforts to provide safeguards to the unions in the use of their economic weapons have taken the form of legislation curbing the power of the courts to issue injunctions in labor cases. Strikes, boycotts, and picketing have been interfered with by suits for damages under the common law, by injunctions forbidding or limiting the exercise of their activities, and to some extent by legislation. The principal obstacle has been the injunction, and consequently for many years the unions have been endeavoring to secure the enactment of laws, in Congress and in the various states, forbidding the courts to interfere by injunction with the normal activities of unions. They have had some little success in securing the passage of these laws. In 1914 Congress passed the Clayton Act, which was supposed to have the effect desired. An anti-injunction law was passed about the same time in Mass-

[1] Adair *vs.* U. S., 208 U. S. 161.

[2] Coppage *vs.* Kansas, 236 U. S. 1.

[3] Similar laws have been declared unconstitutional by the courts of California, Colorado, Illinois, Kansas, Minnesota, Missouri, New York, Ohio, Oklahoma, Pennsylvania, and Wisconsin.

achusetts, and a law similar to the Clayton Act was passed in the state of Arizona. In all three cases the unions have failed to secure their objectives. A recent decision of the Supreme Court of the United States holds that the Clayton Act does not interfere with the issuance of injunctions, as the unions had supposed, and that Sections 6 and 20 confer no rights not previously enjoyed.[1] The Massachusetts law has been declared unconstitutional by the Supreme Court of Massachusetts,[2] and the Arizona law has been held unconstitutional by the Supreme Court of the United States.[3] A law of the same general character was so interpreted by the California Supreme Court as to leave the courts untrammeled in the issuance of injunctions.[4]

There is no question but that uncertainty concerning the constitutionality of laws is a source of irritation and sometimes of distrust of government. Once the Supreme Court of any state has held a certain law to be unconstitutional under due process, the field covered by the law becomes debatable in every state. The legislature of one state is not controlled by the decisions in the other states, but, realizing the tendency of courts to follow one another in their decisions, they will hesitate about passing a law that has been declared unconstitutional in any jurisdiction. It may be that some other court will uphold the law, but in the absence of specific knowledge, desirable and necessary legislation is often postponed while the courts are making up their minds.

The courts are sometimes criticized because of their tendency to lag behind public opinion. There is much jus-

[1] Duplex Printing Press Co. *vs.* Deering, 254 U. S. 443 (1921).
[2] Bogni *vs.* Perotti, 224 Mass. 152 (1916).
[3] Truax *vs.* Corrigan, 257 U. S. 312 (1921).
[4] Goldberg *vs.* Stablemen's Union, 149 California 429 (1906).

tification for the complaint that they hesitate to recognize certain facts which are obvious to legislators and to the common run of mankind; facts which seem to be sufficient to justify many forms of social legislation. There is no acid test of constitutionality that may be applied, and the field in which the police power holds sway is broad and undefined. The task of the courts when passing on the constitutionality of a labor law is generally that of determining whether the statute in question is outside the scope of the police power. The fact that at any time there may exist a difference of opinion among judges over this question, and, indeed, that the same judge may at different times hold different opinions about it indicates clearly enough that the constitutionality of a statute is likely at times to be determined more by the social philosophy of the judge than by any immutable principles of law.

As a cause of unrest and distrust of government the decisions holding invalid laws designed to guarantee the freedom of the individual union member and of the union itself are of the greatest importance. Decisions affecting hours of labor and other attempts to regulate the contract of employment are often given more importance by the general public than by the workers. The Lochner case, for example, has long been cited by liberal thinkers outside the labor movement as an example of judicial obstinacy and lack of enlightenment. The most unconcerned person with whom the writer has ever talked on this subject was the secretary of a local baker's union in New York, who had almost forgotten the decision. It was of no importance one way or the other, he said. Where the union was strong they could get the ten-hour day without a law to help. Where the union was weak the law did not

do any good, because it would not be enforced. His whole interest, therefore. was centered on strengthening the union rather than on the securing of legislation.

This shows why there is so much feeling when laws designed to strengthen the unions or to prevent discrimination against them are declared invalid. This applies not only to legislation forbidding discrimination against union members, but it applies with particular force to laws designed to limit the use of the injunction. Organized labor was sorely disappointed by the decision of the United States Supreme Court, which went far toward robbing the Clayton Act of the protection which they had supposed it contained,[1] and there has been great indignation over the more recent case in which the Arizona anti-injunction law was held invalid.[2]

Nevertheless, the principal basis for distrust of government on the part of organized labor is not the failure of legislatures to pass laws or the decisions of courts declaring them unconstitutional. The principal ground for dissatisfaction is to be found in the decisions of courts defining and limiting the rights of organizations of labor, particularly in connection with strikes. It is only occasionally and at long intervals that courts are called upon to pass on the validity of protective labor legislation, but the handling of labor cases by courts, more particularly inferior courts, is a matter of almost daily occurrence. This has come about largely by the extension of the use of the injunction, as employers against whom strikes are being conducted turn increasingly to the courts, seeking orders restraining the activities of the strikers. There is

[1] Duplex Printing Press Co. *vs.* Deering, supra.
[2] Truax *vs.* Corrigan, supra.

arising a constantly increasing body of law growing out of the decisions of these courts. The question of when a strike is legal or of what organized labor may do in the conduct of a legal strike or in the carrying on of a controversy with an employer, whether through strike or otherwise, is not defined by statute anywhere in the United States. The law has been determined rather by the decisions of courts in damage suits and in injunction cases. In this way there has been built up a body of common law differing in the different states and subject at any time to change in the same state, the result of which is to leave organized labor confused and embarrassed—uncertain as to what it may legally do. A series of important decisions of the United States Supreme Court in this field culminating in the Hitchman case decided in 1917, the Tri-City case in 1921, and the Coronado decision of 1922 have brought organized labor to a fever pitch in its attitude toward the courts.[1] The convention of the American Federation of Labor which met in Cincinnati in June, 1922, appointed a special committee to examine these decisions and to report to the convention what action should be taken by organized labor to defend its rights. As a result of the report of this committee the convention decided to work for constitutional changes which, if adopted, will radically change the character of the government of the United States.[2]

In view of the situation outlined in this chapter, it will be necessary to examine more closely the rights of unions

[1] Of equal importance are the Duplex and Truax cases, involving the interpretation of anti-injunction statutes. All of these cases are cited and discussed elsewhere.

[2] See chap. xvi.

under the law and the attitude of organized labor toward the courts.

READING REFERENCES

See end of Chapter XVII.

CHAPTER XV

TRADE-UNIONS AND THE INJUNCTION

WHAT American trade-unions may do in the furtherance of the interests of their members during a trade dispute is not a question that may be answered glibly and offhand. The statute books are for the most part strangely silent. Unlike the situation in Great Britain,[1] where Parliament has repeatedly enacted legislation defining the rights of unions, there has been very little attempt at such definition in this country. To discover the legal rights of trade-unions we must look, therefore, not to the legislatures, but to the courts.

In the earlier part of the nineteenth century trade-union activity was looked upon as illegal under the common-law doctrine of conspiracy. A case against members of a union of shoemakers that was tried in Philadelphia in 1806 resulted in a verdict that the defendants were "guilty of a combination to raise their wages," and they were fined, each of them, $8 and costs.[2] In 1829 a law was passed by the New York legislature making illegal any

[1] The years 1800, 1824, 1825, 1875, and 1906 are guideposts marking the course of legislative history in Great Britain with respect to the rights of organized labor. Through all of this period, unlike the course of events in the United States, these rights have been matters of legislative definition. Sources in this field are Hammond, *The Town Laborer*, and Webb's *History of Trade Unionism*, and *Industrial Democracy*. See also Commons and Andrews, *Principles of Labor Legislation*, 1920 edition, p. 123 ff.

[2] Commonwealth *vs.* Pullis, published in vol. iii *Documentary History of American Industrial Society*, by Commons and Gilmore, p. 59.

combination "to commit any act injurious to trade or commerce." Under this statute union activity was for a time practically outlawed.[1]

In 1842, however, the Supreme Court of Massachusetts held that a trade union is a lawful organization and that a strike to procure the discharge of a non-union employee is not illegal.[2] This case marked a turning point in the attitude of both courts and the public. The right of workers to organize in unions began to be recognized, and the common law of conspiracy was invoked less frequently. There remained, however, a certain theory of conspiracy, an inheritance of the common law of England, which continues to affect, very considerably, the reasoning of the courts when dealing with labor-unions. Also, there was enacted by Congress in 1890 the so-called "Sherman Anti-trust" law, which forbade combinations in restraint of interstate trade and commerce.

Of these the former has been most influential in setting limits to the lawful activities of unions. With the development of the use of the injunction in labor disputes, the courts have come to have a great deal to say about what unions may or may not do. Consequently, if we wish to find out what the law in this field is, we must depend almost altogether upon judicial decisions based on the common law, and on decisions of courts of equity when dealing with labor disputes.

THE INJUNCTION

An injunction can be issued by a court of equity for the purpose of preventing injury to property or a property

[1] Commons, History of Labour in the United States, vol. i, pp. 406-411.

[2] Commonwealth *vs.* Hunt, 4 Metcalf 111.

right when there is no adequate remedy at law. The right to do business is a property right that may be so protected. Since a strike is an interference with the carrying on of business, its necessary activities may be enjoined unless there is some legal justification. On the other hand, the courts have repeatedly held that a workman may quit his employment at will. In every strike, therefore, there are two rights seemingly in conflict—that of the employees to quit, and that of the employer to carry on business.

When in the late 'eighties employers began to seek injunctions restraining strikers from picketing or carrying on a boycott, the courts were confronted with the necessity of deciding between the two admitted sets of rights and drawing a line where one right left off and the other began. The result of their decisions has been that organized labor generally looks upon the injunctions as a strike-breaking instrument in the hands of the employer.

When an injunction is sought, a preliminary restraining order is sometimes issued without notice and without a hearing, the purpose being to hold matters in *statu quo* until a hearing can be held. Several days elapse before a formal hearing is possible, and the unions claim that this period, during which the strikers are held inactive, often is sufficient to enable the employer to win the strike. If later, on formal hearing, the restraining order is dismissed, the union is not thereby recompensed for the undue restraint under which it was placed, the damage to its interests having already been accomplished.

Another ground for criticism is the issuance of so-called "blanket" injunctions. In the earlier cases, both in this country and in England, it was held that an injunction could have restraining force only against those who were

specifically named and who were served personally with the papers in the case. Nowadays injunctions are issued covering several thousand men, members of the union or strikers. And sometimes, by the use of such terms as "all other persons," "the whole world," as one legal critic has put it, may be included within the prohibitions of an injunction. This is objected to on the alleged ground that persons may innocently violate an injunction and thus incur the risk of punishment for contempt of court.

A third criticism of the modern practice of courts is that the injunction, intended originally as an instrument for the protection of property, is now issued to restrain the commission of crimes. One of the earliest cases in this country having this feature, and certainly the one concerning which there has been the greatest amount of criticism, was the so-called Debs case.[1] This was a case growing out of the famous Pullman strike of 1894. The court admitted that the decree as issued was both for the protection of property and for the prevention of crimes, but it held that the two activities were so bound up together that it was impossible to discriminate between them, and that an injunction affording adequate protection for property, in the very nature of the case, would have to be so drawn as to enjoin the commission of crime. Since that time many similar injunctions have been issued.

A step far beyond this seems to have been taken in California, where, with a law defining and prohibiting "criminal syndicalism" already on the statute books, under which arrests were being made and jury trials held, the attorney-general of the state asked for and a court granted

[1] In re Debs, 158 U. S. 564 (1895).

an injunction against the very acts enumerated in the law.[1]

Objection to the issuance of injunctions in restraint of crime is based upon the fact that the defendant is thereby stripped of his ordinary constitutional safeguards when his case comes up in court. If he were tried in a court of law for the commission of a crime, he would be entitled to a jury trial and to be represented by counsel. He would be entitled to be confronted by his accusers and to summon witnesses in his own behalf. If, however, one is accused of the commission of a crime that has been enjoined by a court of equity, he may be summoned before the judge who issued the injunction on a charge of contempt. In this case he will have none of the rights enumerated above, not even the right to a fixed and previously understood punishment, but the disposal of the case will be largely at the discretion of the judge.

A fourth charge against the injunction is that it leads to the usurpation by the court of legislative functions. It is possible through the issuance of an injunction to create new offenses entirely unknown to the law. Peaceful picketing, for example, is generally legal. It may, however, be enjoined by the court, and then it becomes unlawful. Frequently by the vagueness and generality of its terms, an injunction may bring into the category of offenses almost any act that may naturally be performed in connection with a labor dispute. For example, in a case in Massachusetts, members of the union and their representatives were "perpetually enjoined and restrained from inducing in any manner or by any means" members

[1] See "California Justice," by Professor Zechariah Chafee, *New Republic,* September 19, 1923, p. 97.

of some other union to refuse to work for the complainant.[1]

Other charges against the present use of injunctions are that they often infringe upon the constitutional guaranties concerning freedom of assembly and of speech,[2] and that by its instrumentality an opportunity is given to an unfriendly judge to go to any length in attempting to work injury to the cause of organized labor. A very interesting summary of the objections raised against the use of the injunction appears in the dissenting opinion of Mr. Justice Brandeis in the case of Truax *vs.* Corrigan:[3]

The equitable remedy, although applied in accordance with

[1] Woodbury and Leighton Co. *vs.* McGivern, Supreme Judicial Court, Suffolk County, Equity No. 13054, quoted in Labor Bulletin No. 117 Massachusetts Bureau of Statistics, p. 201.

[2] The temporary injunction issued in September, 1922, by Judge Wilkerson in the United States District Court in Illinois against the striking railway shopmen included among its prohibitions the following:

> "in any manner with intent to further said conspiracy by letters, printed or other circulars, telegrams, telephones, word of mouth, oral persuasion, or communication, or through interviews published in newspapers, or similar acts, encouraging, directing, or commanding any person whether a member of any or either of said labor organizations . . . to abandon the employment of said railway companies . . . or to refrain from entering the service of said railway companies."

And the officers of the several unions were enjoined from "issuing any instructions, or making any requests, public statements or communications, heretofore enjoined . . . to any defendant herein or to any officer or member of any said labor organizations . . . with intent to further said conspiracy, for the purpose of inducing or calculated to induce any such officer or member or any other person whomsoever, to do or say anything intended or calculated to cause any employee of said railway companies . . . to abandon the employment thereof, or any persons to refrain from entering the employment thereof."

[3] 257 U. S. 312.

established practices, involved incidents which, it was asserted, endangered the personal liberty of wage-earners. The acts enjoined are frequently, perhaps usually, acts which were already crimes at common law, or had been made so by statutes. The issues in litigation arising out of trade disputes related largely to questions of fact. But in equity issues of fact as of law were tried by a single judge sitting without a jury. Charges of violating an injunction were often heard on affidavits merely, without the opportunity of confronting or cross-examining witnesses.[1] Men found guilty of contempt were committed in the judge's discretion, without either a statutory limit upon the length of the imprisonment, or the opportunity of effective review on appeal, or the right to release on bail pending possible revisory proceedings. The effect of the proceeding upon the individual was substantially the same as if he had been successfully prosecuted for a crime; but he was denied, in the course of the equity proceedings, those rights which by the Constitution are commonly secured to persons charged with a crime.

It was asserted that in these proceedings an alleged danger to property, always incidental, and at times insignificant, was often laid hold of to enable the penalties of the criminal law to be enforced expeditiously, without that protection to the liberty of the individual which the Bill of Rights was designed to afford; that through such proceedings a single judge often usurped the functions not only of the jury, but of the police department; that in prescribing the conditions

[1] In a hearing of an injunction case on appeal, a New York court said:

> "The record contains many affidavits full of allegations, denials, counter-allegations and counter-denials. This is natural to a hearing of such issues upon ex parte statements unsubjected to the tests of cross-examination, and unrestricted by rulings upon relevancy, materiality, or competency. It may be that the judgment upon trial will be far different from any preliminary relief which this record justifies."—Mills *vs.* U. S. Printing Co., 99 App. Div. 605 (1904).

under which strikes were permissible and how they might be carried out, he usurped also the powers of the legislature; and that incidentally he abridged the constitutional rights of individuals to free speech, to a free press and to peaceful assembly.

EFFORTS TO CURB ISSUANCE OF INJUNCTIONS

The criticisms enumerated above are sufficient to explain the hostility of organized labor to the use of the injunction in labor disputes. The American Federation of Labor has from time to time issued pronouncements condemning this practice of the courts. At the Baltimore convention of the Federation held in 1916, the following resolution was adopted: "That any injunction dealing with the relationship of employer and employee, and based upon the dictum 'Labor is property,' be held and absolutely treated as usurpation, and disregarded, let the consequences be what they may."

The subject has been dealt with repeatedly at the annual conventions. At Denver in 1921 a resolution was adopted which, after criticizing with great severity recent decisions of the United States Supreme Court, and of certain New York State courts, protested emphatically and solemnly,

against this alarming tendency of the courts, which menaces the very existence of American workers as freemen. We assert that the workers have the inalienable right to work when, for whom, and for what they please, and to withhold their work individually or collectively for any reason which they consider sufficient, and that to deny them this right means to revive the medieval institution of involuntary servitude; that they have the right to induce their fellow-workers to join them in their struggles for economic better-

ment and to quit work for hostile employers; that the employer has no property right in labor, as labor is neither a commodity nor an article of commerce.[1]

The Federation has not contented itself with resolutions, but has attempted to secure legislation in the various states and from Congress, defining the equity jurisdiction of courts, and limiting the use of injunctions in labor disputes. Such legislation has been enacted in a few states and the Clayton Act, passed by Congress in 1914, was expected to provide the relief desired so far as federal jurisdiction was concerned.

In 1903 the legislature of the state of California passed a law forbidding the issuance of injunctions in connection with labor disputes.[2] In 1906 [3] and again in 1909 [4] the Supreme Court of California ruled that this law could not be construed as denying to the courts the power to enjoin wrongful acts, thus making it null and void so far as its original purpose was concerned.

In 1914 the legislature of Massachusetts enacted a law providing that the ordinary activities of labor-unions in the direction of improving their conditions are not unlawful, and that no injunction shall be issued in a labor dispute unless to prevent irreparable damage to property or a property right, for which there exists no other adequate legal remedy. Another section of the law provided that in construing this act the courts should not regard the right to work or to do business as a property right, but rather as a personal right.

The constitutionality of this law was attacked, interest-

[1] Proceedings 41st Annual Convention, American Federation of Labor, p. 383.
[2] Acts of 1903, chap. 235, *Sims' Penal Code*, p. 581.
[3] Goldberg *vs.* Stablemen's Union, 149 Calif. 429 (1906).
[4] Pierce *vs.* Stablemen's Union, 156 Calif. 70 (1909).

ingly enough, by a local union of building laborers who were affiliated with the I. W. W. They alleged that a local of the Hod Carriers' Union, affiliated with the American Federation of Labor, were attempting, through a conspiracy, to prevent them from engaging in the "profitable, useful and pleasant employment" of hod carrying, and they desired an injunction restraining the Hod Carriers' Union from interfering with their right to work.

The Supreme Court of Massachusetts held that the right to work was a property right, and that the law was unconstitutional, both because it attempted to legalize the taking of property without due process of law, and because it deprived the plaintiffs of equal protection of the law by discriminating between the property right to work and other kinds of property.[1]

In 1913 a law was passed in Arizona which forbade the courts of that state to issue any injunction against striking, picketing, or carrying on a boycott.[2]

After this law was passed the employees of a restaurant in Bisbee, Arizona, went on strike. They instituted a boycott against the restaurant, and attempted to turn away

[1] ni *vs.* Perotti, 244 Mass. 152.

[2] This part of the law was as follows:

"And no such restraining order or injunction shall prohibit any person or persons from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at or near a house or place where any person resides or works, or carries on business, or happens to be for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute; or from commending, advising or persuading others by peaceful means so to do."—Arizona Revised Statutes, 1913, paragraph 1464.

patrons by means of handbills, banners which were carried by pickets in front of the restaurant, and by verbal argument. As a result, daily receipts were reduced about one-half. The owner sought an injunction against the union, but it was denied, on the ground of the statute quoted above. This decision was sustained by the Arizona State Supreme Court, and the case was appealed to the Supreme Court of the United States.

The decision of the Supreme Court in this case[1] is extremely important. It goes to the heart of the question of interference by legislative enactment with the right of courts to issue injunctions. The contention of the unions is that the courts are exceeding their legitimate functions when they interfere with peaceably conducted strikes and that where there is violence recourse should be to the courts of law, not of equity. They insist that equity jurisdiction should be over property rights only. The right to do business may be a property right, as the courts hold, but when a court says that a union may not carry on its otherwise legitimate activities because of possible interference with this right, the unions believe that there is discrimination between two rights of possibly equal validity, in favor of the employer. Is it equal treatment to say that the union may not interfere with the employer's business, but that the employer may so conduct his business as to prevent the union from accomplishing its legitimate aims? The answer to this question seems clear to the unions, and they ask the legislatures to give them the remedies that seem fitted to the situation.

The decision of the Supreme Court of the United States in the Truax case seems to indicate that such relief cannot be granted. The Arizona statute as

[1] Truax *vs.* Corrigan, 257 U. S. 312.

construed by the Supreme Court of Arizona was held to be in contravention of both the due process and the equal protection clauses of the Fourteenth Amendment, and therefore invalid. Dissenting opinions in this case were filed by Justices Holmes, Brandeis, and Pitney.

For a good many years before the decision in the Truax case, organized labor had been bombarding Congress, trying to get legislation that would limit the issuance of injunctions in federal courts. In 1914 the provisions sought were enacted in the Clayton Act. This contained clauses very similar to those of the Arizona statute declared unconstitutional in the Truax case cited above.

Two decisions of the Supreme Court of the United States are of great importance as interpreting the Clayton Act. One is Duplex Printing Co. *vs.* Deering,[1] in which it was held that the Clayton Act does not legalize a secondary boycott. The other, American Steel Foundries *vs.* Tri-City Central Trades Council,[2] establishes the fact that picketing is not necessarily legal under the Clayton Act, and may be enjoined.

As a result of these decisions it appears doubtful whether any state legislature could enact a law modifying in any material way the power of the courts to issue injunctions in labor disputes that could survive a test in the courts. So far as the Clayton Act is concerned, it has been so interpreted in the Duplex and Tri-City cases as to deprive it of most, if not all, of the protection against the issuance of injunctions that organized labor had supposed it afforded.

The logical inference to be drawn from the decision in the Truax case is that if Congress were to amend the

[1] 254 U. S. 443.
[2] 257 U. S. 184.

Clayton Act so as to overcome the effect of the other decisions, the Supreme Court would throw out the law as unconstitutional.

READING REFERENCES

See end of Chapter XVII.

CHAPTER XVI

RIGHTS OF UNIONS UNDER THE LAW

THAT trade-unions in this country must look, in the main, not to the statute books, but to the courts, for a statement of their legal rights was pointed out in the last chapter. In that chapter it was shown that the leading pronouncements of courts on this subject are to be found in their rulings in injunction cases. In this chapter the trend of opinion in these cases will be examined with a view to discovering what the legal rights of trade-unions are.

Trade-unions are organized for the purpose of engaging in collective bargaining, and by that means bettering the economic condition of their members. The right of wage-earners to organize for this purpose has been frequently affirmed by the courts.[1] This is not a right in the sense that any interference with it is illegal, as is the case with the right to vote, or to be free in one's person. It is a right in the sense that it may be freely exercised unless some obstacle intervenes, such as the exercise by an employer of his right to refuse to employ or to discharge members of unions. It is like the right to acquire property, of which one can take advantage only if the opportunity as well as the right is present.

[1] "Labor unions are recognized by the Clayton Act as legal when instituted for mutual help and lawfully carrying out their legitimate objects. They have long been thus recognized by the courts."—Chief Justice Taft, in American Steel Foundries *vs.* Tri-City Central Trades Council. 257 U. S. 184; 42 Sup. Ct. 72.

So far there is no important difference of judicial opinion. Differences and uncertainty begin at the point where the wage-earners have exercised their right to organize and begin to take measures to make the organization effective. These measures include in particular the strike, picketing, and the boycott. The question of the extent to which the unions may legally make use of these economic weapons is obviously one of utmost importance, and it is here that the greatest confusion and uncertainty exist.

A federal judge, in writing on this very point, has said:

> In our own country without the aid of statute the courts have long since become agreed that workmen have the lawful right to organize for the purpose of securing improvement in the terms and conditions of labor, and to quit work, and to threaten to quit work as a means of compelling or attempting to compel employers to accede to their demands for better terms and conditions. The ground of inquiry and dispute has been about what things the workmen, having organized as aforesaid, may lawfully do in furtherance of the object of the organization.[1]

THE STRIKE

The right to quit work, when exercised individually, is, as a rule, unquestioned. It is a right that is protected by the 13th amendment to the Constitution of the United States. If there can be any question about the legality of a strike it must therefore rest on other grounds than the mere individual quitting of work by the persons on strike. A federal circuit court once tried to enjoin in-

[1] Judge Francis E. Baker, "Respective Rights of Capital and Labor in Strikes." 5 Ill. Law Rev. 453.

dividuals from striking,[1] but the order was reversed by the United States Circuit Court of Appeals in a decision that seems to have been accepted generally as a correct statement of the law.[2]

On this point, therefore, the courts are agreed. They are in practical agreement also over what is sometimes called the "general right" to strike. Exactly what a general right may be in a particular case is not altogether clear, and the very use of such a term seems to be evidence of a muddled state of judicial opinion on the rights of unions. For example, the Supreme Court of Massachusetts has said, "There is no question of the general right of a labor-union to strike. On the other hand, it is settled that some strikes by labor-unions are illegal." [3]

The doctrine that some strikes are illegal, despite the fact that an individual may freely quit his employment at will, grows out of an essential difference between the two acts. An individual's decision to quit his employment depends, presumably, upon his single individual judgment. The decision also is one that may affect no one but himself. A strike, however, involves an additional element, that of an agreement beforehand by a number of workers that they will exercise in concert their individual right to quit. Because of the increase in power that such a combination entails, the courts are apt to scrutinize its motives much more carefully than they do those of an individual.

To a layman it would appear that if an individual has a right to do a thing—such as quitting his work—he has a right to agree with others to do it. Stated in that way,

[1] Farmers Loan & Trust Co. *vs.* Northern Pacific R. R. Co. 60 Fed. 803 (1894).
[2] Arthur *vs.* Oakes, 63 Fed. 310 (1894).
[3] Pickett *vs.* Walsh, 192 Mass. 572 (1906).

the courts seem in general to hold the same view. The Supreme Court of Minnesota, for example, has expressed itself as follows:

What one man may lawfully do singly two or more may lawfully agree to do jointly. The number who unite to do the act cannot change its character from lawful to unlawful. The gist of a private action for the wrongful act of many is not the combination or conspiracy, but the damage done or threatened to the plaintiff by the acts of the defendants.[1]

The New York Court of Appeals gave expression to a similar view when it said:

Whatever one man may do alone he may do in combination with others, provided they have no unlawful object in view. Mere numbers do not ordinarily affect the quality of the act.[2]

The Supreme Court of Indiana, in discussing the same point, agreed in general, but introduced a significant qualifying clause:

Whatever one man may do, all men may do, and what all may do singly they may do in concert, *if the sole purpose of the combination is to advance the proper interests of the members,* and it is conducted in a lawful manner.[3]

A reservation appears also in the utterance of an Illinois court:

It has sometimes been said that an act which is not unlawful if done by one person cannot be unlawful because done by a multitude. This may be true. It must, however, be

[1] Bohn Mfg. Co. *vs.* Hollis, 54 Minn. 223 (1893).
[2] National Protective Ass'n *vs.* Cumming, 170 N. Y. 315 (1902).
[3] Karges *vs.* Amalgamated Woodworkers, 165 Indiana 421 (1905). (Italics mine.)

borne in mind that the united act of many persons is very different from the isolated act of one.[1]

This view, thus cautiously expressed, is stated clearly and positively by the Supreme Court of Massachusetts:

. . . there is a fact which puts a further limitation on what acts a labor-union can legally do. That is the increase of power which a combination of citizens has over the individual citizen.[2]

In the emphasis placed here on the effect of numbers, we have a remnant of the old common-law doctrine of conspiracy to which reference was made in the preceding chapter. In Great Britain the doctrine was modified by successive acts of Parliament, and was finally abolished altogether.[3]

In the United States there have been only a few cases in which courts have held illegal a combination of workers having objectives that would be lawful for individuals, and using no illegal method, merely because of the combination. There was a New Hampshire case [4] in 1844, and a New Jersey case [5] in 1867, both of which apparently have been overruled.[6]

Yet we find in the decisions of the courts of practically

[1] Doremus *vs.* Hennessy, 621 Ill. App. 391 (1895).
[2] Pickett *vs.* Walsh, 192 Mass. 572 (1906).
[3] A clause of the Trade Disputes Act of 1906 reads as follows: "An act done in pursuance of an agreement or combination by two or more persons shall, if done in contemplation or furtherance of a trade dispute, not be actionable unless the act, if done without any such agreement or combination would be actionable." Trade-union activities were freed from the charge of criminal conspiracy by the Conspiracy and Protection of Property Act of 1875.
[4] State *vs.* Burnham, 15 N. H. 396.
[5] State *vs.* Donaldson, 32 N. J. L. 151.
[6] See article by Francis Bowes Sayre, "Criminal Conspiracy," 35 *Harvard Law Review*, 393.

every state in the Union the doctrine that the exercise by many in concert of the individual right to stop work may under certain circumstances be contrary to law.[1] Since these decisions do not rest upon any statutory prohibitions of restraint of trade, and since there are no other statutes that can be interpreted as implying a prohibition of strikes, it seems reasonable to conclude that there is an aspect of illegality about the combination itself. This seems to be the only conclusion possible when strikes are held illegal on account either of method or of objectives, when the same methods or objectives in the case of an individual would not be illegal. The Appellate Division of the New York Supreme Court in Mills *vs.* U. S. Printing Co. said, "If A, C, D and E cannot do what A alone can lawfully do, the vice must be in the combination." [2]

In general, the courts will not interfere with a strike if they approve of its purpose. A principle which has frequently been expressed is that a strike, to be legal, must have as its primary object the benefit of its members,[3] not the injury of the employer. This principle is a very difficult one to put into effect, however, because the two motives are often to be found together. The court then has to decide which is the dominating motive. The Supreme Court of Massachusetts, in a leading case, makes it clear that even where the strikers think the objectives, if won, will be beneficial to themselves, the strike will not

[1] An exception is California, where apparently all strikes are legal. Parkinson *vs.* Building Trades Council, 154 Calif. 581 (1908).

[2] 99 App. Div. 605.

[3] Not everything that could be so defined is legal, but such benefits as the court holds to be in harmony with the general good of society.

be legal unless the court agrees with them. In this case the court said:

Whether the purpose for which a strike is instituted is or is not a legal justification for it, is a question of law to be decided by the court. To justify interference with the rights of others the strikers must in good faith strike for a purpose which the court decides to be a legal justification for such interference. To make a strike a legal strike it is necessary that the strikers should have acted in good faith in striking for a purpose which the court holds to have been a legal purpose for a strike, but it is not necessary that they should have been in the right in instituting the strike for such a purpose. On the other hand, a strike is not a strike for a legal purpose because the strikers struck in good faith for a purpose which they thought was a sufficient justification for a strike. As we have said already, to make a strike a legal strike the purpose of the strike must be one which a court as matter of law decides is a legal purpose of a strike, and the strikers must have acted in good faith in striking for such a purpose.[1]

Boiled down to its essentials, this ruling seems to mean that a strike is legal when and only when a court says it is. Such an attitude on the part of the courts must leave the unions in considerable doubt as to what they may do. There are few accepted fundamental principles upon which the court may base its decision as to the legality of a strike. It would appear to be extremely difficult for the court to decide "what as a matter of law is a legal strike," since there is no law on the subject, except as the courts have built it up in their decisions; and the law they have thus built up apparently depends upon an uncertain admixture of what the judge knows to

[1] De Minico *vs.* Craig, 207 Mass. 593 (1911).

be fundamental legal principle, and what he believes to be desirable social policy.[1]

Nevertheless, a body of law is in the process of formation, and when it is complete the unions will have some assurance as to what they may do, if the courts do not reverse themselves. That this body of law is incomplete, is still in the process of formation, becomes evident when we inquire further into the decisions affecting strikes. These decisions, as indicated above, turn very largely on the question of purpose. If the purpose of a strike is to benefit those participating in it, it is generally said to be legal. If its primary purpose is to injure someone else, it is illegal.[2] Applying this principle, we find that it is generally regarded as legal to strike for higher wages, shorter hours, or other obvious economic advantages, if there is no complicating feature, involving improper motive. Beyond this, what constitutes a legal strike cannot be said with any degree of certainty. What is legal in one state may not be in another.

[1] In the De Minico case cited above, the court ruled against a strike to procure the discharge of a foreman because it did not think he had done anything meriting discharge. The court said that strikes for that purpose might be justifiable. It would be legal, for example, to strike against a foreman who used insulting epithets. But this was the only inkling given by the court as to what constitutes a legal strike. "It is not necessary in the case at bar to define such cases and lay down their limits. It is wiser, in our opinion, in matters such as we are now dealing with, to go no farther than to decide each case as it arises."

[2] This is a view that is widely held, although there is some dissent from it. Chief Justice Parker of the New York Court of Appeals, after quoting the principle mentioned above, said, "I do not assent to this proposition, although there is authority for it. It seems to me illogical and little short of absurd to say that the everyday acts of the business world, apparently within the domain of competition, may be either lawful or unlawful according to the motive of the actor."—National Protective Association *vs.* Cumming, 170 N. Y. 315 (1902).

This is clearly to be seen in the cases involving strikes to compel the discharge of a non-union man—strikes for the closed shop, in other words. In the famous case of Commonwealth *vs.* Hunt, decided in Massachusetts in 1842, the right to strike for such a purpose was upheld. This is a principle that has been accepted in New York [1] and in Illinois [2] and in some of the other states. In Massachusetts, however, where the doctrine was first pronounced, it has been definitely abandoned. Since 1900 a strike for the closed shop has been illegal in that state. In the case of Plant *vs.* Woods [3] it was held that a strike or threat of strike to compel the discharge of men refusing to join a particular union was akin to extortion.

In other courts the decisions are conflicting, and the whole legal situation is in such doubt that Francis Bowes Sayre, in his case book on labor law, when he attempts to sum up the situation in a footnote, expresses himself with great caution as follows:

> The doctrine that a strike to compel the discharge of non-union employees is not *per se* illegal is followed in the majority of jurisdictions in which the question has come before the courts, and *seems* to be the view generally adopted by those jurisdictions where the question is still a new one. It *seems* to be the law in California, Connecticut, Illinois, Indiana, Minnesota, New York, and Oklahoma, and *apparently* also in Florida, Nebraska, North Carolina, and Texas.[4]

On the other hand, "the doctrine that a strike to compel the discharge of non-union employees is *per se* illegal is followed by Massachusetts (although difficult to reconcile

[1] National Protective Association *vs.* Cumming, 170 N. Y. 315.
[2] Kemp *vs.* Division 241, 255 Ill. 213 (1912).
[3] 176 Mass. 492.
[4] Sayre, *Cases on Labor Law*, p. 311 (italics mine).

with Commonwealth *vs.* Hunt), and *apparently* by New Jersey, Pennsylvania, Vermont, and *perhaps* Maryland and New Hampshire. . . . Although this doctrine was once law in Connecticut and Illinois, it has *apparently* been overruled by subsequent cases within those states." [1]

Two cases in New York will serve to illustrate the confusion on this point. In Curran *vs.* Galen,[2] decided in 1896, a workman sued the members of a union for damages on account of his discharge. There had been an agreement between the union and an employers' association that all employees should be members of the union. It was provided that if any non-union men were hired they should be given four weeks in which to join the union, and if they did not do so at the end of that time they were to be discharged. Under this agreement the complainant was discharged, and, not being able to obtain employment in any of the shops controlled by the association, he brought suit. The court held that the agreement was against public policy and could not be offered as a defense against the action for damages.

In 1905 another case arose involving a closed-shop agreement. This time the agreement was that only union members should be employed and that the employer should forfeit a sum of money if he violated the rule. He did violate it, and refused to pay the sum called for in the agreement. The union, through its president, brought suit, and the case went up to the Court of Appeals. The defense set up by the employer was that the contract was void, as against public policy. This defense was rejected by the court, which declared that while it "might operate to prevent some persons from being employed by the firm,

[1] *Ibid.*, pp. 318-319. (Italics mine.)
[2] 152 N. Y. 33.

or, possibly, from remaining in the firm's employment, that is but an incidental feature." [1]

From the standpoint of the lay observer, it is difficult to reconcile these two decisions. Under the agreement with which the first case was concerned, the employer was not limited in his choice of employees to members of the union. He might hire whom he would, but non-union men employed must later on join the union. There was no attempt to prevent their employment, for the union was open to them. In the second case, the employer was restricted to persons who were already members of the union, and a non-union man had no chance. The first agreement was therefore more liberal than the second, yet the court held it to be against public policy.

A later case, decided in 1910, seems to overrule Curran *vs.* Galen. The court held that an agreement to employ only union men and to discharge those who refused to join the union is a lawful agreement.[2]

The situation in Massachusetts also seems peculiar. The controlling opinion there with respect to striking for the closed shop is the case referred to above, Plant *vs.* Woods, decided in 1900.[3] This case involved an attempt by a union of painters to compel members of a rival union to abandon their organization and join the other. In carrying out this purpose they made it clear that they did not wish the members of the rival union discharged; they wanted them to join what they considered the right union and continue at work. As a last resort, however, if persuasion should fail, they did want the men discharged, and they told the employers so. They threatened to call

[1] Jacobs *vs.* Cohen, 183 N. Y. 207.
[2] Kissam *vs.* U. S. Printing Co., 199 N. Y. 76.
[3] 176 Mass. 492.

strikes against employers who would not discharge the men who refused to join their union, and in some cases did call them.

As stated above, the court ruled that these strikes were illegal, and it granted an injunction against them. Counsel for the defense argued that the action of the strikers was justified on the ground of competition, a principle which has been generally accepted as justifying action on the part of a person or corporation engaged in business, resulting in injury to another engaged in the same business. The court wholly rejected this plea, intimated that there was no competition between the two unions, and held that the case was analogous to a previous one before the court in which a union had tried to extort money from an employer.

Mr. Justice Holmes, then a member of the Massachusetts Supreme Court, in a dissenting opinion pointed out that a majority of the court would probably admit that a boycott or a strike intended to raise wages directly would be legal. In this case the purpose "was not directly concerned with wages. It was one degree more remote. The immediate object and motive was to strengthen the defendant's society as a preliminary means to enable it to make a better fight on questions of wages or other matters of clashing interests. I differ from my brethren in thinking that the threats were as lawful for this preliminary purpose as for the final one to which strengthening the union was a means. I think that unity of organization is necessary to make the contest of labor effectual, and that societies of laborers lawfully may employ in their preparation the means which they might use in the final contest."

Six years later the court had to deal with another case

of conflict between two groups of workmen. Several locals of the bricklayers' union demanded for their members the work of "pointing"—that is, cleaning or finishing the walls after the erection of a brick or stone building. They did not ask the men doing this work to join the bricklayers' union. Instead, they called strikes on buildings where pointers were employed, in order to force their discharge and thus secure their work for themselves. The court refused to issue an injunction in this case, and held that the action of the union was justified, since its members were competing with the pointers for employment.[1] Here again we have a case where the court seems to uphold the harsher aspect of labor competition while enjoining a weaker form.

[1] Pickett *vs.* Walsh, 192 Mass. 572 (1906).

The language of the court in justifying this decision, and in differentiating it from Plant *vs.* Woods, is most interesting. The result of the decision is harsh, the court admits, both on the contractors and on the pointers. "But all that the labor-unions have done is to say you must employ us for all the work or none of it. They have not said that if you employ the pointers you must pay us a fine, as they did in Carew *vs.* Rutherford, 106 Mass. 1. They have not undertaken to forbid the contractors employing pointers, as they did in Plant *vs.* Woods, 176 Mass. 492. So far as the labor-unions are concerned, the contractors can employ pointers if they choose, but if the contractors choose to give the work of pointing the bricks and stones to others, the unions take the stand that the contractors will have to get some one else to lay them. The effect of this in the case at bar appears to be that the contractors are forced against their will to give the work of pointing to the masons and bricklayers. But the fact that the contractors are forced to do what they do not want to do is not decisive of the legality of the labor-union's acts. That is true wherever a strike is successful. The contractors doubtless would have liked it better if there had been no competition between the bricklayers' and masons' unions on the one hand and the individual pointers on the other hand. But there is competition. There being competition, they prefer the course they have taken. They prefer to give all the work to the unions rather than get non-union men to lay bricks and stone to be pointed by the plaintiffs."

From the preceding, it is evident that the right to strike is not unqualified, and that the legal status of a strike varies from state to state, depending on the point of view of the courts. In summing up the matter, Commons and Andrews say: "Except where compulsory arbitration has been introduced, as in Kansas in 1920, strikes solely and directly involving rate of pay or the hours of labor are in ordinary times everywhere considered legal. But strikes to gain a closed shop, sympathetic strikes, and strikes against non-union material have been condemned in many jurisdictions. Only in California is it settled law that all strikes are legal." [1]

PICKETING

What picketing is and its purpose were discussed in Chapter VIII. It is one of the means employed for making a strike effective, but its legality in the absence of statute is in greater doubt than that of the strike itself. In three states, Alabama, Colorado, and Washington, doubts are removed by statutes declaring all picketing illegal.

Where there is no statute the question of legality has to be settled by the courts. The point to be determined is whether picketing constitutes intimidation, which all courts agree is unlawful. On this basis, all picketing is declared illegal in California, Illinois, and Michigan, where it is held that picketing necessarily implies intimidation and violence. The leading decision in California declares that picketing "in its very nature" involves physicial intimidation.

It tends and is designed by physical intimidation to deter

[1] *Principles of Labor Legislation*, 2d edition, p. 106.

other men from seeking employment in the places vacated by the strikers. It tends and is designed to drive business away from the boycotted place, not by the legitimate methods of persuasion, but by the illegitimate means of physical intimidation and fear. . . . We think it plain that the very end to be attained by picketing, however artful may be the means to accomplish that end, is the injury of the boycotted business through physical molestation and physical fear caused to the employer, to those whom he may have employed or who may seek employment from him, and to the general public. The boycott, having employed these means for this unquestioned purpose, is illegal, and a court will not seek by over-niceties and refinements to legalize the use of this unquestionably illegal instrument. . . .[1]

A decision of the Supreme Court of Massachusetts upheld an injunction forbidding picketing by only two men on the ground that "it constituted moral intimidation." [2]

The other view, which, according to Sayre, is supported by a majority of the decisions,[3] is that peaceful picketing —that is, unaccompanied by acts or threats of violence— is lawful; and that, while illegal acts in connection with picketing may be enjoined, picketing itself may not be.[4] The right was defined in a federal court as involving access to the labor market, to be enjoyed equally by employer and employee. An employer has access for the purpose of persuading men to work for him. The right of the strikers to have access to the labor market in order to

[1] Pierce *vs.* Stablemen's Union, 156 Calif. 70 (1909).
[2] Vegelahan *vs.* Gunter, 167 Mass. 92 (1896).
[3] "According to the weight of authority, mere peaceful picketing, if it involves no intimidation, is not illegal." Sayre, *Cases on Labor Law*, p. 211.
[4] Cf. dissenting opinion of Mr. Justice Holmes in Vegelahan *vs.* Gunter, supra.

defeat this purpose by peaceful means is equally unassailable. "The right of the one to persuade (but not coerce) the unemployed to accept certain terms is limited and conditioned by the right of the other to dissuade (but not restrain) them from accepting." [1]

While this view is probably the one followed in most states, there are a good many cases in which a contrary view is held. The leading decision of the Supreme Court of the United States held that where picketing is carried on by "three or four groups" with from four to a dozen men in each group, "the numbers of the pickets in the group constituted intimidation." It was suggested that for purposes of "observation, communication, and persuasion," the strikers should be limited to "one representative for each point of ingress and egress in the plant or business." [2] Just how far this decision interferes with peaceful picketing may be considered doubtful in view of an apparent disagreement between Chief Justice Taft and Associate Justice Brandeis as to its significance. These two were in accord in the Tri-City decision, but in another case, decided immediately afterward, both of them, Mr. Taft in the majority, and Mr. Brandeis dissenting, made reference to the Tri-City case and drew different inferences from it. Mr. Taft said, "We held that . . . picketing was unlawful and that it might be enjoined as such, and that peaceful picketing was a contradiction in terms," while Mr. Brandeis remarked, ". . . this court has recently held that peaceful picketing is not unlawful." [3]

[1] Iron Molders' Union *vs.* Allis-Chalmers Co., 166 Fed. 45 (1908).

[2] American Steel Foundries *vs.* Tri-City Central Trades Council, 257 U. S. 184.

[3] Truax *vs.* Corrigan, 257 U. S. 312 (1921).

THE BOYCOTT

A boycott is a withdrawal of patronage from, or a refusal to do business with, an individual or corporation for the purpose of promoting some desired action. As a weapon of organized labor it may be used either as a substitute for, or in connection with, a strike. Boycotts are generally designated as primary or secondary. A primary boycott involves only the persons immediately concerned in a controversy. As such it has little effectiveness in a labor dispute. As consumers of the products of a given factory, the employees of that factory are insignificant. Frequently they are not purchasers of any of its products. The primary boycott, therefore, though a legal weapon,[1] is generally ineffective in a labor dispute.

A secondary boycott is one that involves third persons, not concerned with the original controversy. Where this weapon is effectively employed, the union not only refrains from dealing with the employer, but withdraws its patronage from others who deal with him, and, so far as it can, induces others to do the same. Conducted in this way, the boycott is frequently very effective and constitutes a serious interference with the employer's right to do business, including his access to the market. This is a property right, and even in the absence of a prohibitory statute interference with it is illegal at common law and may be enjoined unless there is justification.

Where there is a statute prohibiting the use of the boycott, its legal status is, of course, fixed, and this now appears to be the case under federal jurisdiction. While there are no laws specifying the boycott by name, court decisions have by interpretation brought it within the

[1] Mills *vs.* U. S. Printing Co., 99 App. Div. (N. Y.) 605.

scope of certain general laws. As long ago as 1893 an attempt by the Brotherhood of Locomotive Engineers to promote a boycott of a railroad company by inducing other railroads to refuse to handle its cars was declared illegal under the Interstate Commerce Act, and enjoined.[1]

By another decision the Sherman Anti-trust Act became a bar to the placing of a boycott on goods entering into interstate commerce. The so-called Danbury Hatters case grew out of an attempt to compel a manufacturer of hats in Danbury, Connecticut, D. E. Loewe & Co., to establish a closed union shop. In pursuance of this effort a nation-wide boycott was declared, resulting in great loss to the Loewe Company. A suit for damages was instituted against members of the union under the Sherman Anti-trust law and was carried through to a successful conclusion. The verdict awarding triple damages to the plaintiff was upheld by the Supreme Court of the United States.[2]

On account of these decisions, organized labor redoubled its efforts to secure legislation that would legalize the boycott. In 1914 Congress passed the Clayton Act, which included certain clauses believed by the labor leaders to be sufficient to free the unions from all danger of legal interference with their economic weapons, so far as the federal government is concerned. Section six of that act declared that the anti-trust laws should not be so construed as to forbid the existence of unions, and that they should not be held to be illegal combinations or conspiracies in restraint of trade. Section 20 declared in substance that

[1] Toledo, Ann Arbor and No. Michigan Ry. Co. *vs.* Pennsylvania Co., 54 Fed. 730.

[2] Loewe *vs.* Lawlor, 208 U. S. 274 (1908); Lawlor *vs.* Loewe, 235 U. S. 522 (1915).

an injunction should not be issued in a labor dispute except to prevent irreparable injury to property for which there is no adequate remedy at law, and it was generally understood to declare that there should be no injunctions against the strike, picketing, or the boycott.[1]

[1] The text of these sections is as follows:

"Section 6: The labor of a human being is not a commodity or article of commerce. Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor, agricultural or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws.

"Section 20: No restraining order or injunction shall be granted by any court of the United States, or a Judge, or the Judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving or growing out of a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing, and sworn to by the applicant or by his agent or attorney.

"And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading

In 1921, however, the Supreme Court of the United States so interpreted the Clayton Act as to leave in it very little of the protection organized labor supposed it contained. An injunction against a secondary boycott was sustained. The court pointed out that Section 6 merely declared that the anti-trust laws do not restrain individuals from "lawfully carrying out the legitimate objects" of the unions, and that such an organization is not *per se*—"merely because of its existence and operation"—an illegal combination. Section 20 was said not to apply to the case in hand because it refers to "employers and employees," etc., meaning, the court said, an employer and his own employees. To make it apply to an employer in one place and employees—not his—in another would be contrary to the intent of the law. "Congress had in mind particular industrial controversies, not a general class war." [1]

This decision, together with the decision in the Tri-City case, is almost enough to nullify the apparent intent of the Clayton Act. Whatever was left of it seems to have been swept away in a later decision [2] declaring unconstitutional a law in Arizona similar to the Clayton Act. Under this law the Supreme Court of Arizona denied an injunction against a form of picketing described by Chief

> others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States."—Clayton Act, Act of October 15, 1914, c. 323. U. S. Compiled Statutes, Sec. 8835 f., 1243 d.

[1] Duplex Printing Press Co. *vs.* Deering, 254 U. S. 443.
[2] Truax *vs.* Corrigan, 257 U. S. 312.

Justice Taft as "moral coercion by illegal annoyance and obstruction." The case was appealed to the United States Supreme Court, where it was held that an injunction should have been granted and that the law as interpreted by the Arizona court was unconstitutional. This decision leaves little doubt about the final interpretation of the Clayton Act.

In the states the secondary boycott is generally illegal. It is declared so by statute in a number of states, and in others the weight of judicial opinion is against the legality of the practice. In California alone is boycotting clearly and unmistakably legal.[1]

EMPLOYERS' WEAPONS

From the preceding it is evident that organized labor is limited in the use of its economic weapons. It may strike, but not for purposes disapproved of by the courts. It may picket in most of the states, but it must be neither intimidating nor coercive, and it must satisfy the courts on this point, even those which speak of "verbal acts" and "moral coercion." In some states all picketing is illegal. It may withdraw its own patronage from its own employer, and it may ask others to do so, but it may not similarly withdraw patronage—and ask others to do likewise—from third parties who refuse to join the boycott against the employer.

These limitations on the activities of unions have been a prolific cause of unrest. That unrest has not been allayed by the discovery that the courts have taken a different stand with respect to the employer and that he has been left in full possession of his economic weapons. While

[1] Parkinson *vs.* Building Trades Council, 154 Calif. 581. Pierce *vs.* Stablemen's Union, 156 Calif. 70.

there are distinct limitations on the right to strike, there appear to be no similar limitations on the lockout. A lockout is a temporary discharge by an employer for the purpose of bringing pressure to bear upon the workers either to do what he requires of them or to withdraw certain demands that they have made upon him. Few questions have ever been raised as to the legal right of the employer to engage in this activity. There is no American case with which the writer is familiar where the issue has been clearly involved. In a New York case, decided in 1894, the court said, by way of dictum: "It seems to me obvious that the clothing manufacturers had the right to lock out all operatives connected with the defendants' association, because of demands which they considered unjust." [1] More than a decade later a federal court again as dictum said: ". . . Employers may lock out (or threaten to lock out) employees at will. . . ." [2] Sayre, in his case book on labor law, quotes from only one decision on the lockout, and that a Canadian case.

In considering the relative importance of weapons at the disposal of the employer and employee, however, it should be noted that it is not the lockout which corresponds in importance to the strike, but the right of individual discharge. As a matter of fact, the lockout is a weapon seldom used. A lockout breaks up an employer's business just as completely as a strike. If he can accomplish the same purpose by picking out the leaders from time to time and discharging them, that is a much more economical procedure.

It has already been pointed out that laws designed to

[1] Sinsheimer *vs.* United Garment Workers, 77 Hun 215 (1894).

[2] Iron Molders Union *vs.* Allis-Chalmers Co., 166 Fed. 45 (1908).

prevent an employer from discharging a man on account of union membership are unconstitutional,[1] and equally so are laws that forbid an employer to compel a worker to sign a non-union contract.[2] When such an agreement is signed, the non-union status of the shop is pretty clearly established as a matter of law. If the employee agrees that he will not join a union, the union officials may be enjoined from inducing him to do so.[3] The same results have been accomplished by an agreement with the employee that he will leave the shop if he does join the union.[4]

Picketing, as we have seen, is subject to great limitations, but there is no similar limitation on the employer's right to hire strike-breakers. As in the case of discharge, this right is practically unlimited. Countless decisions of courts of equity impress the fact that the employer has the right of access to the labor market, and that he is free to hire and fire at will. On the other hand, a federal court has defined picketing as an exercise of the employees' right of access to the market,[5] but the courts have not generally taken this view.

The situation is not so clear with respect to the blacklist, the employers' weapon that corresponds to the boycott. There are contradictory opinions with respect to the legality of the blacklist at common law. A Federal court has held that the blacklist is not an illegal conspiracy.[6] On the other hand, there are decisions in

[1] Adair *vs.* U. S., 208 U. S. 161.
[2] Coppage *vs.* Kansas, 236 U. S. 1.
[3] Flaccus *vs.* Smith, 58 *Atlantic Reporter* 894.
[4] Hitchman Coal and Coke Co. *vs.* Mitchell, 245 U. S. 229.
[5] Iron Molders Union *vs.* Allis-Chalmers Co., 166 Fed. 45.
[6] Boyer *vs.* Western Union Telegraph Co., 124 Fed. 246 (1903).

Massachusetts and Maryland declaring the blacklist illegal.[1] A law forbidding the use of the blacklist has been declared constitutional in Minnesota.[2] It has been declared unconstitutional in Texas.[3] However, the doubt about the legality of the blacklist which these decisions seem to leave is not of so great importance as it would be if the blacklist were a thing easier to control. As a matter of fact, there is no great difficulty about maintaining a blacklist, whether the courts consider it legal or not. In the nature of the case, the blacklist is carried on in secret, and there are many ways in which it can be made effective without either its victims or the officers of the law becoming acquainted with the procedure.

In the main, therefore, it appears that the employer is free to make use of his economic weapons, while the unions are considerably handicapped in the use of theirs. This situation has been a growing cause of unrest. The unions believe that the courts are against them. They have believed so all the more since the decision in the Hitchman case mentioned above, and their suspicion has been greatly intensified by the more recent decision in United Mine Workers *vs.* Coronado Coal Co.[4] These two decisions are of such outstanding importance as to justify more than passing comment.

The Hitchman case grew out of an attempt on the part of a West Virginia coal operator to maintain a closed non-union shop. Endeavoring to accomplish that purpose, he required his employees to agree verbally, and later to sign a contract that they would not become mem-

[1] Cornellier *vs.* Haverhill Shoe Manufacturers Association, 221 Mass. 554 (1915); Willner *vs.* Silverman, 109 Md. 341 (1909).
[2] State *vs.* Justus, 85 Minn. 279 (1902).
[3] St. Louis R. R. *vs.* Griffen, 171 S. W. 703 (1914).
[4] 259 U. S. 344 (June 5, 1922).

bers of the United Mine Workers of America and remain in his employ. Knowing of this agreement, the United Mine Workers nevertheless sent an organizer into the field. He approached employees of the company and endeavored to interest them in the union. Apparently he did not ask them to join the union, but invited them to give adherence to a plan which involved their remaining in the employ of the Hitchman Company until such time as he had a majority of the employees in agreement with the plan. He would then notify them and call a strike for the purpose of inducing the Hitchman Company to sign an agreement with the union. The Hitchman Company got an injunction against the procedure on the ground that it was an attempt to procure a breach of the contract that the company had with each of its employees. The case went to the Supreme Court of the United States. Mr. Justice Pitney, speaking for the majority of the court, held that there was no difference between agreeing to join the union and actually joining it. Consequently, he upheld the injunction, which was very sweeping and forbade all efforts to unionize any of the employees, *present or prospective,* of the Hitchman Company.

In consequence of this decision, it appears to have become the law of the land that if an employer succeeds in inducing or compelling his employees to sign individual contracts in which they agree not to become members of a union during the period of the contract, the union is, in effect, prevented from carrying on an organizing campaign in that locality. If an attempt is made to reach the workers who have signed such contracts in order to acquaint them with the advantages of unionism, the attempt may be enjoined as an attempt to procure a breach of contract. Thus by the device of the individual con-

tract the employer may secure a property right in the maintenance of a non-union shop and thus a right to government protection against trade-unionism.

The Coronado case arose out of a strike in Arkansas in which there was much violence and destruction of property. The operator sued the union under the Anti-trust Act, alleging a conspiracy to restrain interstate commerce, and charging that the destruction of property was an outcome of the conspiracy. The case was tried before a jury in a United States District Court and resulted in a verdict of $200,000 for the plaintiff. This was automatically trebled in accordance with the provision of the Anti-trust law, and there were added to it $25,000 for counsel fees and $120,600 interest from July 17, 1914, the date of the destruction of the property, to November 22, 1917, when the judgment was entered. The United States Circuit Court of Appeals struck out the item of interest, but affirmed the rest of the judgment. This left the total sum to be paid by the United States Mine Workers at $625,000.

When the case came before the Supreme Court of the United States, there were three questions of general importance to be decided. First, whether a union, though unincorporated, may be sued. Second, whether the United Mine Workers of America was responsible for the damage done to the employer's property. Third, whether the destruction of property was a violation of the Sherman Anti-trust Act. The court answered the first question with an affirmative and the others with a negative.

What the effect of the decision on this first point may be, only the future can tell. In this aspect of the case the decision is in harmony with the Taff-Vale case decided in Great Britain in 1901. This case grew out of a rail-

way strike in Wales during which property was destroyed. The railway company sued the union for damages, and finally won a verdict, after the case had gone to the House of Lords as the Supreme Court of the United Kingdom. This was the first time that it had ever been held that an unincorporated union could be sued for damages.[1] Chief-Justice Taft in his decision in the Coronado case cites this decision as a precedent.

In commenting on this phase of the decision in the Coronado case, the Executive Council of the American Federation of Labor, in its report to the 1923 convention, said:

The first great proposition which attracts attention is, stated in substance, that so far at least as its ability or liability to sue or be sued, a labor organization is made to be on substantially the same footing at law as a corporation. This may be regarded as judicial legislation, being at variance as seems to be confessed by the decision itself with the prior holdings of responsible courts and basic conceptions of law. By virtue of this decision a labor organization may be sued directly and its funds, at least such funds as are devoted to strike purposes, may be seized, assuming wrongful acts on the part of individual members of the organization engaged in a strike. Heretofore no direct suit at law for damages has been recognized. There has existed, however, as in the Danbury Hatters' case, individual liability on the part of all the members of the union for acts considered objectionable and incident to the purpose of the strike. The important point of the decision in this respect is that while it becomes possible to sue the union directly, the individual liability of the members apparently may continue in the eye of the

[1] This decision had a profound effect upon British labor, and was one of the immediate moving causes leading up to the formation of the British Labor Party. The decision was nullified by the passage of the Trades Disputes Act of 1906.

court precisely as theretofore. The union became a corporation so far as service of process is concerned, but its members yet remain a partnership in fact, so far as the liability of each for the acts of the other is involved.[1]

With respect to the two other questions before the court, the decision appears at first glance to be a victory for the union, for it set aside the judgment of the court below, and thus appears to be in agreement with the contentions of the United Mine Workers. A closer examination of the decision, however, reveals a possible menace to union activity. In a series of *obiter dicta* the court laid down the proposition that a union may be held in damages on account of injury to property during a strike. No principle is suggested by which responsibility for any particular act may be determined. Indeed, the remarks of the court embodying this principle are open to the inference that the union may be held liable for any violence occurring during a strike if the strike itself has been authorized by the union. This part of the opinion of the court has been characterized as "ominous" in a recent comment by a well-known professor of law,[2] and it may well be given full validity any day in a decision in a suit for damages against a union.

The peril to the unions lies in the possibility that, whether actually responsible or not, their funds may be wiped out as a result of a suit for damages due to the acts of individuals. The individuals, though members of the union, may act solely on their own initiative or they may even be agents of a hostile employer wishing to destroy the union. Under these dicta it may reasonably be

[1] Report of the Proceedings of the Forty-third Annual Convention of the American Federation of Labor, Portland, Oregon, October, 1923, p. 94.

[2] Francis Bowes Sayre, *The Survey*, June 15, 1922, p. 386.

assumed that the union will be held liable, nevertheless, if it has authorized the strike. This view is sustained by the fact that the sole ground on which the court held that the United Mine Workers as an international union could not be a defendant in the suit was that the international had not "authorized" the strike or "ratified it by paying any of the expenses."

"If the International Board had interfered," the opinion continues, "or if it had assumed liability by ratification, *different questions would have arisen.*" [1]

In commenting on this very phase of the opinion, the lawyers for the League for Industrial Rights say, "This seems to mean that proof of the conduct of a strike by a union and lawless acts by the strikers in the course of the strike establishes a *prima facie* case against the union."[2]

As a result of the menace to their rights that the union men believe these and other court decisions represent, a special committee on the courts was appointed at the 1922 convention of the American Federation of Labor. This committee brought in a report which was in part as follows:

What confronts the workers of America is not one or several casual court decisions favoring the interests of property as against the human rights of labor, but a series of adjudications of the highest tribunal of the land, successively destroying a basic right or cherished acquisition of organized labor, each forming a link in a fateful chain consciously designed to enslave the workers of America.

Five years ago a severe blow was dealt by the Supreme Court decision in the notorious case of the Hitchman Coal and Coke

[1] Italics mine.
[2] 4 Law and Labor 176.

Company *vs.* Mitchell, which seriously limited the right of organized labor to unionize establishments. . . .

On January 3, 1921, the Supreme Court in the case of Duplex Printing Press Company *vs.* Deering practically nullified the portions of the Clayton Act which were intended to safeguard the rights of labor in industrial disputes and to limit the power of the courts to decide such disputes by summary injunctions, thus striking down with one fell stroke the result of unceasing agitation of organized labor which had extended over twenty years, and was designed to equalize before the law the position of workers and employers.

In December, 1921, the Supreme Court, by its decision in the case of Truax *vs.* Corrigan, set aside as unconstitutional a state law which limited the power of the courts to issue injunctions in labor disputes, thus frustrating the efforts of labor in all industrial states to secure relief from the arrogated authority of the courts.

In the same month the court in the case of American Steel Foundries *vs.* Tri-City Central Trades Council virtually abolished the right of striking workers to picket, no matter how peaceably; authorized the courts arbitrarily to regulate the conduct of strikes, and set up a rule limiting strikers to the stationing of one "missionary" in front of each entrance to the struck establishment—one striking "missionary" to persuade hundreds or even thousands of strike-breakers of the iniquity of their course. What a mockery upon the acknowledged rights of workers on strike to win over would-be strike-breakers by pleading and persuasion!

On May 15, 1922, the Supreme Court set aside as unconstitutional the Child-labor law, which had been enacted after years of agitation on the part of the most forward-looking and humane elements of our citizenship.

On June 5, 1922, the Supreme Court handed down a unanimous opinion in the case of United Mine Workers of

America *vs.* Coronado Coal Company, which in effect opens the way for a general raid upon union funds by holding that labor-unions are suable as such and liable for damages to employers if caused by unlawful acts on the part of any of their striking members, whether such acts are authorized or not, so long as the strike is sanctioned by the union.

Thus by six decisions the United States Supreme Court, composed of nine men without direct mandate from the people and without responsibility to the people, has set aside a congressional enactment which clearly expressed the will of the vast majority of the people and all but outlawed the activities of organized labor, which alone can protect the workers from the oppression and aggression of the greedy and cruel interests.

This despotic exercise of a usurped power by nine men, or a bare majority of them, over the lives and liberties of millions of men, women, and children, is intolerable. . . .

The committee recommended as a remedy for the situation created by these decisions certain amendments and enactments. The proposed amendments are as follows:

1. Prohibiting child labor under sixteen years of age.

2. Prohibiting the making of any law or judicial decision denying to the workers the right to organize, to bargain collectively, to engage in a strike or a boycott.

3. Providing that when the Supreme Court holds a law unconstitutional Congress may re-enact it and by a two-thirds majority make it the law of the land.

4. Making it easier to amend the Constitution.

In addition, the committee proposed the enactment of a new child-labor law, amendments to the Clayton Act making "more definite and effective the intention of Congress," and the repeal of the Sherman Anti-trust Act, which "was intended by Congress to prevent illegal com-

binations in restraint of trade, commonly known as 'trusts,' but through judicial misinterpretation and perversion has been repeatedly and mainly invoked to deprive the toiling masses of their natural and normal rights." [1]

The report of the committee was adopted by the unanimous vote of the convention.

READING REFERENCES

See end of Chapter XVII.

[1] Report of Proceedings of the Forty-second Annual Convention of the American Federation of Labor, Cincinnati, Ohio, June, 1922, pp. 371-373.

CHAPTER XVII

LABOR AND THE COURTS

ORGANIZED labor's distrust of the courts grows in part out of the decisions reviewed in the last chapter. The leaders and spokesmen of labor feel that the unions have not received equal treatment with the employers. The courts have intervened to limit the unions in the use of their economic strength, and have left the employers largely unhampered in the use of theirs. Many of the decisions that seemed to have been contrary to the interests of the workers may have been less so than appeared on the surface,[1] but others have seemed arbitrary and hos-

[1] Consider, for example, the decisions throwing out as unconstitutional laws prohibiting an employer from discharging a man because of union membership (Adair *vs.* U. S. and decisions in state courts). The law in this case was of doubtful usefulness to the unions, anyway. But if it had been upheld, would not a legal basis have been laid for interfering with the freedom of the union in establishing the closed union shop? That idea seems to be suggested in a decision of the Supreme Court of Illinois upholding the right of the unions to strike for the closed shop. The court referred to an earlier case in which it had held invalid a law designed to protect union membership (Gillespie *vs.* People, 188 Ill. 176). That decision was made on the ground of the employer's right "to manage his business as he sees fit."

"It would seem," the court said, "that labor organizations should be accorded the same right to manage their affairs and to determine what is best for their own interests. To deny them the right to determine whether their best interests required that they should be associated in their work only with members of their organization would imperil their very existence. If they have the right to make such a requirement, then when their employer procures non-union labor they have the right to

tile. It is the latter sort of decision that has had the greatest effect in stirring up the distrust of labor. Some of these cases are selected for discussion in this chapter, not with the thought that they are typical, but because they have had a far-reaching effect on the thinking of men in the labor movement.

A series of attempts on the part of coal operators in West Virginia to get the aid of the courts in their controversies with the United Mine Workers of America is of outstanding interest. The Hitchman case has already been discussed. In 1921 the Supreme Court of West Virginia issued an injunction limiting the activities of the miners' union, at the request of coal operators in Mercer and McDowell counties. The order of the court restrained the union from "inducing or attempting to induce by persuasion, threats, intimidation or abusive or violent language, the employees of the plaintiffs, or either of them, so long as they are under contract of employment with the plaintiffs, to join the United Mine Workers of America." [1] In this case the court was apparently following the reasoning of the Hitchman case.

In September, 1921, the Borderland Coal Corporation, in behalf of itself and sixty-two other coal operators in Mingo County, West Virginia, sought in the United States District Court in Indianapolis, where the miners' union has its headquarters, a restraining order against both the United Mine Workers and against union operators in the central competitive field. Among other

strike to enforce that requirement, as that is the only peaceable method available to compel an adjustment of their controversies and to preserve the integrity of their organizations."—(Kemp *vs.* Division, 255 Ill. 213.)

[1] Algonquin Coal Co. *vs.* Lewis, Supreme Court West Virginia. (Quoted from 3 Law and Labor 255, November, 1921.)

things, the corporation asked to have the union declared an unlawful conspiracy in restraint of trade, and that it be restrained from all interference with the operators or their employees, and it asked that the union operators be restrained from collecting union dues under the so-called "check-off" system, since this provided the unions with the sinews of war.

Judge Anderson did not accede to the first demand, but he enjoined the check-off, and he restrained the union "from advising, assisting, encouraging, aiding, abetting, or in any way or manner and by any and all means whatsoever, by the use of any funds or moneys however collected by the International Union, United Mine Workers of America, its officers, members, agents, or representatives, to the unionization or the attempted unionization of the non-union mines in Mingo County, West Virginia, and Pike County, Kentucky." [1]

The case was appealed, and the United States Circuit Court of Appeals modified the injunction to apply only to acts that are clearly wrongful. It pointed out that attempts by peaceable means to persuade men to join a union are not unlawful. With respect to enjoining such activities the court said:

In the present state of the law, and without a constitutional exercise of the legislative power of regulation, appellee had no greater right to a decree suppressing lawful action (such as the publications, speeches and personal persuasions heretofore mentioned in this paragraph) in support of the closed union shop program than appellants had to a similar decree suppressing similar lawful action in support of the

[1] Borderland Coal Corporation *vs.* United Mine Workers of America, *275* Fed. *871*. See also 3 Law and Labor *271*, December, 1921. Text of the injunction appears in decision of Court of Appeals, *278* Fed. 56.

closed non-union shop program. Neither side had any such right.

The injunction was also modified by withdrawing the restraint against the check-off. The decision held that the West Virginia operators might oppose the illegal use of union funds to the injury of the complainants, but that they could not properly complain of the collection of union dues. "Manifestly," said the court,

unless money was collected, the union's executive officers could not send it into West Virginia to aid or promote the interfering acts. But in the same contracts that contain the check-off feature were provisions for the payment of wages and the recognition of the miners as human beings with the physical capacity to labor. On a parity with appellee's contention respecting the check-off element, all the other elements in the series of causation leading up to the proximate cause should also be enjoined. Money could not be sent into West Virginia by the executive officers unless it was collected from the miners' wages; nor unless the miners earned wages; nor unless the miners were human beings having the capacity to labor.[1]

Despite this rebuke from the higher court and the clear intimation in it that the District Court had exceeded its power, it was only a few months before another injunction even more drastic in terms was handed down by Judge George W. McClintic of the federal District Court for the Southern District of West Virginia. In response to a suit brought by fifty-seven coal-mining corporations in the Winding Gulf District of West Virginia, Judge McClintic enjoined the United Mine Workers from doing anything that would "tend to create and establish a mo-

[1] Gasaway, *et al., vs.* Borderland Coal Corporation (U. S. Circuit Court of Appeals, Seventh Circuit). 278 Fed. 56 (1921).

nopoly of mine labor for the purpose of *unreasonably increasing wages* or the price of labor *above what it should be under normal conditions,*" from "taking any further steps or from doing any further act or thing to unionize the mines of these plaintiffs, by *persuasion,* menaces, threats, intimidation, and force or violence," and from holding mass meetings at certain specified points in the district.[1] This injunction was also modified, and to a large extent set aside when the case came up before the United States Circuit Court of Appeals of the Fourth District at Richmond, Virginia, on April 17, 1922.[2]

After two injunctions forbidding the United Mine Workers to organize in West Virginia had been set aside by the United States Circuit Court of Appeals, it would be natural to suppose that lawyers would advise their clients that such attempts are bound to be futile. And one

[1] Algonquin and Pocahontas Coal Co. *vs.* United Mine Workers. 4 Law and Labor 129, May, 1922. Italics mine.

[2] The editors of *Law and Labor,* published by the League for Industrial Rights, an employers' organization concerned with protecting the legal rights of employers, had previously criticized Judge Anderson's injunction very severely. On Judge McClintic's injunction they make this mildly cryptic utterance:

> "We are wont to look upon the non-union coal fields of West Virginia as one of the strongholds of American liberty, to which the disgusted and impoverished union miner may retreat with all probability of securing good wages for honest work under more steady conditions than anywhere else in the coal fields. That he has the right to some place to turn from the tyranny of an organization that will not let him work at all, unless it can obtain the rates which it wisely or otherwise sees fit to demand, seems to us certain. Yet, if this opportunity and this right is threatened by the illegal activities of the United Mine Workers, surely the law is strong enough to protect him. It is of great interest, therefore, not only to such miners, but to the operators and to the rest of the country, that the law should be upheld."—4 Law and Labor 129, May, 1922.

would suppose that if further cases of the sort were brought into court the district judges would make their decisions agree with those of the higher courts. Yet in September, 1922, we find twenty-three coal companies in the Kanawha District of West Virginia again appealing to a federal judge for an order preventing both the work of organization and the check-off. A temporary restraining order against the check-off was issued by the United States District Court in the Southern District of West Virginia in September, 1922, and on March 20, 1923, after hearing both sides, the court announced its finding that the United Mine Workers' union is engaged in an illegal conspiracy in attempting to organize West Virginia and that the check-off is an essential part of that conspiracy. Therefore, an injunction was issued restraining the United Mine Workers from sending any money into West Virginia "to be used or which may be used to aid, abet, promote, or assist in unionizing the mines of these plaintiffs," and it restrained the union employers in the Kanawha District from "checking-off" union dues.[1] Like the other two cases of similar character, this decision was carried to the Circuit Court of Appeals, and as before the injunction was modified to include only the prohibition of violent and illegal tactics.[2]

It must be evident that a series of events of this sort is bound to set up doubts in the minds of the workers as to the ability or fairness of the district judges who granted the injunctions. They were so obviously contrary to established legal principles that the attorneys for an em-

[1] Carbon Fuel Co. *vs.* United Mine Workers, 5 Law and Labor, 146, June, 1923.

[2] United Mine Workers *vs.* Carbon Fuel Co. (U. S. Circuit Court of Appeals, 4th Circuit), 288 Fed. 1020.

ployers' association questioned the soundness of the first one before the Court of Appeals had spoken. After the Appeals Court in two different circuits had pointed out the lack of justification for such rulings, a third district judge could be found who would make the same ruling again. In considering the relation of these injunctions to industrial unrest it must be remembered that the decisions of the Court of Appeals reversing the courts below could not over-take the disadvantages caused by the action of the district courts. Before the Appeals Courts could speak, the union in each case was under a restraint that was as compelling as if it had been legal.

Another class of decisions likely to have the effect of antagonizing the workers is where the judge uses language indicative of bias or where by other acts there is evidence of an attitude of hostility toward the unions, or of partisanship on the employer's side of the controversy. Perhaps as striking an example of this sort of thing as could be found appeared in a statement by Justice Van Siclen of the New York Supreme Court, who said, in connection with an injunction against picketing, "They (the courts) must stand at all times as the representatives of capital, of captains of industry, devoted to the principle of individual initiative, protect property and persons from violence and destruction, strongly opposed to all schemes for the nationalization of industry, and yet save labor from oppression, and conciliatory toward the removal of the workers' just grievances." [1]

Another member of the New York Supreme Court, Justice Strong, in another picketing case, utilized the opportunity for a curious sort of attack on trade-union-

[1] Schwartz & Jaffe *vs.* Hillman (Supreme Court, Kings Co., N. Y., March, 1921), 115 Misc. Reports 61.

ists, and particularly those of foreign birth. The opinion is long, and of such a character as to make summarization difficult but a few excerpts will serve to show its tenor:

The defendants, many of whom are foreigners, claiming that this is a free country, state that they are within their rights, admit the picketing, and allege that the plaintiff has no cause for complaint.

. . . . . .

Some foreigners coming to this country have a strange idea of freedom and liberty. Their conception of liberty is the unrestrained rights of the individual to do as he may choose, irrespective of any right of his neighbor. Their cry is that, all men being equal, no individual must be permitted to profit by reason of individual strength of arm or brain; that everything in life must be brought to some unknown level. Men and women of this sort come into this country in droves, and the immigration laws are insufficient to curb them. It is, therefore, important that they be made to realize that the American people and institutions stand for a liberty with justice to all and with our shops open to all on a common ground of equality.

. . . . . .

During the war did not the labor delegates in this country hold the government by the throat, when weak-kneed officials and public officers bent to their demands, instead of using the draft army for essentials? Did they not intimidate legislators and executive officers with their threats and scold at the courts and the judge . . . ?

. . . . . .

The plaintiff contends that the defendants are interfering with it and its employees. It desired to be let alone. The defendants allege in their answer that they are "peacefully picketing." Why picket at all? Why not leave plaintiff alone as it desires and thereby permit the pickets to employ themselves at some useful and commendable occupation

where they may do a real man's work and earn a laborer's honest wage? Picketing and the posting of sentinels are done as war measures. Our laws and institutions will not permit of the waging of private war in such a manner.[1]

More restrained but possibly more significant, coming as it does from a court of last resort,[2] was the language of the Massachusetts Supreme Court in granting an injunction against the activities of a union. This was a case in which there were two unions of painters. One union, wishing to get control of the field and drive the other union out of business, served notice on the employers that they could "expect trouble in their business" if they continued to employ members of the other union. The court held that this was not legitimate competition, but extortion. In expressing itself as to the significance of the expression that employers may expect trouble in their business the court said:

It is well to see what is the meaning of this threat to strike, when taken in connection with the intimation that the employer may "expect trouble in his business." It means more than that the strikers will cease to work. That is only the preliminary skirmish. It means that those who have ceased to work will, by strong, persistent, and organized persuasion and social pressure of every description, do all they can to prevent the employer from procuring workmen to take their places. It means much more. It means that, if these peaceful measures fail, the employer may reasonably expect that unlawful physical injury may be done to his property; that *attempts in all the ways practised by organized labor* will be made to injure him in his business, even to his ruin, if possible; and that, by the use of vile and opprobrious epithets

[1] A. L. Reed Co. *vs.* Whitman, *et al.* Supreme Court, Brooklyn, September 22, 1921.

[2] The court in New York which goes by the name of Supreme Court is not the court of last resort.

and other annoying conduct and actual and threatened personal violence, attempts will be made to intimidate those who enter or desire to enter his employ; and that whether or not all this be done by the strikers or only by their sympathizers, or with the open sanction and approval of the former, he will have no help from them in his efforts to protect himself.[1]

Against this statement it is interesting to note that later on in the same opinion the court says of this union: "It is true they committed no acts of personal violence or of physical injury to property, although they threatened to do something which might reasonably be expected to lead to such results."

It would be difficult for a trade-unionist to read the preceding excerpts without feeling considerable uneasiness. In the first case the judge says flatly that he is on the side of capital. In the other two cases there is such obvious distrust of the motives and good faith of organized labor as possibly to justify a question concerning the ability of the court to judge fairly in a labor case. Both courts apparently disapprove of unions so heartily as to arouse some reasonable doubt in the mind of a unionist about his chances of getting from them full recognition of his legal rights.

CRIMINAL CASES

In addition to the civil cases discussed above, there are some outstanding criminal cases that have had great influence in determining the attitude of organized labor toward the courts. In such cases the impression of unfairness sometimes arises from the methods of the prose-

[1] Plant *vs.* Woods, 176 Mass. 492. Italics mine.

cutor, sometimes from the attitude of the judge, and sometimes from the personnel of the jury.

A case where the prosecutor and the judge both have been the objects of criticism was the so-called dynamite case in Judge Anderson's court in Indianapolis in 1912. One of the defendants, Olaf Tvietmoe of San Francisco, was singled out for discriminatory treatment by both judge and prosecutor. Judge Anderson on one occasion sharply reprimanded him and made him change his seat because he thought he had been laughing at the judge. In summing up before the jury, the district attorney referred frequently to Tvietmoe by name, always with an epithet, such as "the infamous Tvietmoe" or "Tvietmoe the murderer." Perhaps it was not surprising that the jury convicted him—as a murderer, probably, for which he was not under indictment—but the fact that the judge gave him one of the longest sentences is less easy to understand, for there was really no evidence against him. The Circuit Court of Appeals set aside the verdict in his case as contrary to the evidence, and he went free.

Another singular aspect to the dynamite case was the connection with it of the National Erectors' Association. The dynamite campaign had been against buildings in course of erection by members of this association. They naturally were anxious to help the prosecution. But the government made it possible for this association, which was fighting the union in its legitimate as well as in its illegitimate activities, to have access to the letter files of the union. On this point I still feel, as I did when, immediately after attending the trial, I wrote in the *Survey,* "It must be remembered that the Erectors' Association has been active for years in another direction than that of apprehending criminals. It exists for the purpose

of smashing a labor-union. In the steel industry proper, for men even to meet together means discharge. The structural trade has not swung that far toward domination by the employer. Men with union cards who stay quiescent work alongside the others in its open-shop work. But the impropriety of permitting an agent of the Erectors' Association to have access to the 60,000 or so letters, of which evidently the vast majority had to do with the legitimate activities of the union, since only a few hundred were used in the trial, ought to be obvious to anyone." [1]

In a previous chapter reference was made to the practice of getting rid of strike leaders by having them arrested on trumped-up charges, which often fall flat when the case is presented in court, but which nevertheless are effective if the prisoner can be held without bail pending trial.[2] Sometimes very serious charges have been involved. Two cases that attracted a great deal of attention at the time were those of Ettor and Giovannitti, leaders of the Lawrence strike of 1912, and John Lawson, one of the leaders of the Colorado coal strike of 1913-14. The charge in both of these cases was murder. Ettor and Giovannitti, after months in jail, were acquitted.[3] Lawson's experience was different, and of such significance that it may well be summarized here.

[1] The *Survey*, February 1, 1913, p. 616.

[2] During the last thirty years such a practice by the military authorities has grown up. In Idaho, Montana, Colorado, West Virginia, and other states, where there has been considerable policing of strike areas by the National Guard, men have frequently been arrested under no charges whatever and held in jail for considerable periods on the vague plea of "military necessity."

[3] James Heaton, "Legal Aftermath of the Lawrence Strike." The *Survey*, vol. xxviii, p. 503, July, 1912.

He was indicted by a grand jury that had been hand-picked [1] by the sheriff of Las Animas County, Colorado, who was defeated for re-election the same year because he was believed to have used his office to assist the coal companies in the strike. Half of the members of this grand jury were closely identified with the coal-mining interests. One was private secretary to a coal-company president. The trial judge was barred by the state Supreme Court immediately after the Lawson trial from sitting in any more strike cases, because just before his appointment as judge he had been employed by some of the coal companies involved in the strike.[2] Members of the trial jury who were disposed to vote for an acquittal, affidavits later showed, were threatened and intimidated by a bailiff until a verdict of guilty was returned.[3] The judge pronounced a sentence of imprisonment for life. Later, when the case reached the Supreme Court of the state, the judgment was reversed and Lawson was set free.[4]

Before Judge Hillyer, who presided at the Lawson trial, was barred by the Supreme Court from sitting in strike cases, he presided also in the trial of one Zancanelli, a striker who was also charged with murder. Zancanelli, like Lawson, was found guilty and was sentenced to life imprisonment. His case was also appealed to the Supreme Court of the state, and the conditions under which his trial took place were reviewed by that court. The opinion of the court is taken up almost altogether with a state-

[1] That is, the jury panel having been exhausted, the sheriff drew up a list of jurors of his own choosing. See John A. Fitch, Law and Order in Colorado, *Survey*, vol. xxxiii, p. 241.
[2] People *ex rel.* Burke *vs.* District Court, 60 Colo. 1.
[3] *Survey*, vol. xxxiv, p. 349.
[4] Lawson *vs.* The People, 63 Colo. 270.

ment of the manner in which the trial jury was chosen. Several of the prospective jurors stated, when questioned by the prosecutor, that they had formed opinions concerning the guilt or innocence of the defendant, but, notwithstanding such opinions, they could give him a fair trial. To all prospective jurors the defense put in substance the following question: "Can you start out on the trial of this case giving to the defendant the benefit of the legal rule that a defendant must be presumed to be innocent until he is proven to be guilty?" The prosecution objected to this question, but the judge overruled the objection when the question was put to those jurors who had stated that they had formed no opinion as to the guilt or innocence of the accused. But, to quote from the Supreme Court's opinion: *"When propounded to those who had stated they held opinions or had formed or expressed opinions concerning the guilt or innocence of the defendant, the objection was sustained, and the juror not permitted to answer."* [1]

A long list of questions designed to bring out the state of mind of the juror and which were overruled are reproduced in the opinion of the court. The trial was taking place in a community where there had been violence and something akin to civil war, and many of the questions were for the purpose of discovering whether the prospective juror had taken any part in this civil war. Such questions were asked as whether the prospective juror had taken part on either side of the strike, or whether he had advocated deportation of striking miners, or whether he had participated in any of the so-called battles, or was a deputy sheriff, or, being a deputy sheriff, had been paid by the coal company for his services. The court sustained

[1] Italics as in original.

objections to all of these questions, and the jurors were not permitted to answer them. One juror, who had stated that his business associations with the coal company would tend to bias him in his verdict, was held by the court to be a competent juror when the defense had exhausted its fifteen peremptory challenges.

After the jury had been chosen but before any evidence was presented in the case, attorneys for the defense asked permission to question one of the jurors further. The attorneys had been informed that this juror had offered to make a bet with one of the residents of the town that if he were accepted as a juror "there would be either a hung jury or a hung dago." This request was overruled by the court. After the trial and conviction of Zancanelli, upon hearing a motion for a new trial, the court did permit the defense to examine this juror, and he admitted that he had offered to make the wager in question.

In summing up its opinion in the case which set aside the verdict and ordered a new trial, the Supreme Court said, "The errors are so numerous, so obvious, and so fatal to the validity of the proceedings, that unless they were written into the record as they are, under the seal of the trial court, we could not believe that such things had occurred in the trial of a cause in a court of record." [1]

Zancanelli never had his second trial. His indictment, along with hundreds of others that were procured during the tense feeling during and following the strike, was quashed at the request of the Attorney-General of the state.

Both Lawson and Zancanelli owed their freedom to the decisions of the Supreme Court of the State of Colorado, and it may be suggested, therefore, that these men

[1] Zancanelli *vs.* People, 63 Colo. 252.

at least ought to be impressed with the fairness of the courts, rather than otherwise. But it must be remembered that Lawson and Zancanelli are entitled to their freedom if they are not law-breakers. Nevertheless, as a result of malfeasance on the part of sheriff, prosecutor, and trial judge, they were deprived of their liberty for many months and stood during all that time in jeopardy of their lives.

Another criminal case that has attracted widespread attention is that of Tom Mooney, convicted in California of complicity in a dynamite outrage during a "preparedness" parade in San Francisco in 1916, resulting in the death of some twenty-five people. The circumstances of the Mooney trial were such as to lead to the widespread belief that evidence was manufactured to suit the occasion, that the prosecution was guilty of subornation of perjury, and that a witness perjured himself in the hope of obtaining a cash reward. The assistant district attorney who was actually in charge of the case assured the writer that he did not care whether perjury had been committed or not, and that the main thing was to get Mooney shut up in jail because he was a bad citizen. This was a case where the prosecutor alone is the recipient of criticism by those who believe that injustice has been done.

After the trial was closed new evidence concerning the character of the witnesses came to the attention of the trial judge that was so convincing to him that he appealed to the Supreme Court of the state for a new trial and to the Governor of the state for a pardon. Several of the jurors who voted to convict Mooney have joined in the plea for a new trial when confronted with the later evidence. Successive Governors of California have refused to act.

Mooney was a labor leader and had made himself particularly obnoxious to some of the largest employing interests in San Francisco. The belief is widespread that his prosecution and conviction were brought about by public officials desiring to serve these interests and that Mooney is in jail not for committing murder, since there is no competent evidence that he did that, but because as a labor leader he was troublesome.[1]

IMPORTANCE OF THE JUDGES' PHILOSOPHY

The cases cited so far in this chapter have been selected, as was stated at the outset, for the purpose of calling attention to the prejudice against organized labor that sometimes finds expression in decisions of courts and in the acts of officers of the law. They serve to emphasize the power that lies in the courts to influence unfavorably to the workers the course of the labor struggle. But where prejudice is less evident, the power of the court is the same, and its tremendous influence in fixing the conditions of the struggle are everywhere evident. It is important that we should understand that this power exists, and realize its meaning for the labor movement. This was stressed by Professor Hoxie, who said:

In general the courts have the power . . . to hold the balance of power between the workers and the employers. They can make or mar any efforts of the organized workers to better their relations with unwilling employers. They hold the practical destinies of militant unionism in their hands. If,

[1] See report of President's Mediation Commission, which investigated the Mooney case early in 1913, as one of the causes of unrest interfering with co-operation with the government during the war, and which reported that Mooney ought to have a new trial. For an account of the trial, see Fitch, the "San Francisco Bomb Case," *Survey*, July 7, 1917, p. 305.

as judges, they are closely identified in viewpoint with the employers, they can destroy any practical equality of legal relationship between the two forces. . . .

. . . the legality or illegality of the closed shop depends practically upon the viewpoint of the court. . . . We see here also how the legal status of the union may depend upon what the courts deem to be motive and effect, though practically the courts know little usually in regard to union purposes; *i.e.*, why things are really done by the unions.[1]

It is also important that we should understand that it is the point of view or social philosophy of the judge, instead of any fundamental and unchangeable principle of law, that determines the issue in most labor cases. A writer in a law journal comments on a study made in 1915 of the decisions in the magistrates' courts in New York City. Such wide differences in method of handling similar cases were revealed that "the conclusion was inescapable that justice is a personal thing, reflecting the temperament, the personality, the education, environment, and personal traits of the magistrates." In fact, the results of the study were "so startling and so disconcerting that it seemed advisable to discontinue the comparative tables of the records of the justices." [2] The writer points out that psychological motives and influences "are not altered when one assumes the rôle of judge. Just as is the case with other opinions of individuals, judicial opinions necessarily represent in a measure the personal impulses of the judge, in relation to the situation before him, and these impulses are determined by the judge's life-long series of previous experiences." [3]

[1] Hoxie, *Trade Unionism in the United States*, pp. 233, 235-236.

[2] "Influences in Decisions of Judges," by Charles Grove Haines, 17 Ill. Law Rev. 96, at p. 105.

[3] Haines, *op. cit.*, pp. 104-105.

That a similar view is held by economists and students of labor problems is indicated by the following quotations from authoritative works in this field.

It is most difficult to determine what is the primary motive of the workingmen in undertaking a strike or a boycott. They aim both to injure the employer and to benefit themselves. The bias of the judge necessarily plays a large rôle in the determination of which of these is the controlling motive.[1]

In the last analysis, the decisions of the court in these delicate questions of intent and interest will be decided by the political economy of the court.[2]

A passage in Webb's *Industrial Democracy* dealing with this subject is worth quoting in greater detail.[3]

If the action comes into court the Trade Union will know that, though the jury may give a verdict as to the bare facts, the judgment will, in nine cases out of ten, depend practically on the judge's view of the law. And though we all thoroughly believe in the honesty and impartiality of our judges, it so happens that, in the present uncertainty, the very law of the case must necessarily turn on the view taken of the general policy of Trade Unionism. If the judges believed, as we believe, that the enforcement of Common Rules in industry, and the maintenance of a Standard Rate, a Normal Day, and stringent conditions of Sanitation and Safety were positively beneficial to the community as a whole, and absolutely indispensable to the continued prosperity of our trade, they would no more hold liable for any damage which, in the conduct of its legitimate purpose, it incidentally caused to particular individuals a reasonably managed Trade Union

[1] Commons and Andrews, *Principles of Labor Legislation*, 2nd edition, p. 98.

[2] Adams and Sumner, *Labor Problems*, 1908 edition, p. 193.

[3] Sidney and Beatrice Webb, *Industrial Democracy*. Introduction to the 1902 edition, pp. xxxi-xxxii.

than a militant Temperance Society or the Primrose League. But a clear majority of our judges evidently believe, quite honestly, that Trade Unionism—meaning the enforcement of Common Rules on a whole trade—is anomalous, objectionable, detrimental to English industry, and even a wicked infringement of individual liberty, which Parliament has been foolishly persuaded to take out of the category of crimes. Their lack of economic training and their ignorance of economic science is responsible for this state of mind. Unfortunately, their preoccupation with the technical side of their own profession renders it unlikely that they will dispel this ignorance by any careful study of labor problems. When, therefore, they have to decide whether a particular injury, caused by the operations of such a combination, is or is not actionable, they would not be doing their duty, holding the view that they do of its harmfulness, if they did not treat it much more severely than they would if precisely similar acts were committed by associations which they thought to be beneficial to the community—say, for instance, by a combination of capitalist employers, in the course of the fierce and unrelenting competition of international trade. The result is that Trade Unions must expect to find practically every incident of a strike, and possibly every refusal to work with non-unionists, treated as actionable,[1] and made the subject of suits for damages, which the Trade Union will have to pay from its corporate funds.

In addition to this testimony as to the underlying bases for the decisions of courts, there is testimony from the judges themselves. Mr. Justice Holmes, who dissented from the majority of the court in the New York ten-hour case,[2] said in his opinion, "This case is decided upon an economic theory that a majority of the country does not

[1] Since the passage of the Trades Disputes Act in 1906 this statement requires modification.

[2] Lochner *vs.* New York, 198 U. S. 45.

entertain." Mr. Justice Brandeis, in his dissenting opinion in the more recent Duplex case,[1] gives repeated evidence of his belief that judges make their decisions on the basis of their understanding and interpretation of social facts. In this opinion Justice Brandeis spoke of the fact that strikes once illegal and even criminal are now recognized by the courts as lawful. "This reversal of a common-law rule," said Justice Brandeis, "was not due to the rejection by the courts of one principle and the adoption in its stead of another, but to a better realization of the facts of industrial life." He next referred to the tendency of some courts to consider illegal strikes for the unionization of a shop. But, he said, "other courts with better appreciation of the facts of industry," took a different view.

In the same opinion, explaining how the Clayton Act came to be passed, Justice Brandeis said, "It was objected that, due largely to environment, the social and economic ideas of judges, which thus became translated into law, were prejudicial to a position of equality between workingman and employer; that due to this dependence upon the individual opinion of judges, great confusion existed as to what purposes were lawful and what unlawful." Accordingly, Congress passed the Clayton Act defining certain rights of unions, "instead of leaving judges to determine, according to their own economic and social views, whether the damage inflicted on an employer in an industrial struggle was *damnum absque injuria,* because an incident of trade competition, or a legal injury, because in their opinion economically and socially objectionable."

The opinions of judges must necessarily be influenced by their training and environment. It is not altogether

[1] Duplex Printing Co. *vs.* Deering, 254 U. S. 433 (1921).

surprising, therefore, that the courts as a whole are inclined, at best, to be very conservative in their attitude toward organized labor, and that a spirit of active opposition appears at times in the decisions of some of the judges. The reasons are clear.

In the first place, most judges come from the employing, or the leisure, or the non-wage-earning class. The great majority of those who have the leisure and resources for obtaining college or professional education are naturally outside the ranks of wage-earners. A majority of them, therefore, have not had, at the time of entering law school, personal contact with many of the harsher problems of life, or those which are particularly characteristic of the wage-earners. After beginning their study of law, they have very little opportunity to develop an acquaintance with or understanding of such problems. The curricula ordinarily do not include the teaching of economics or of industrial history. If the student has attended college before entering law school he may have attended such courses, but few law schools require a college degree as a condition of entrance. The law student does not as a rule pay very much attention to legislation of particular interest to the wage-earner. Very few law schools offer courses having to do specifically with the law of industrial relations, and the schools that do have such courses have introduced them only within the last three or four years. Certain aspects of trade-union activity are brought indirectly to the attention of the student in connection with courses dealing with combinations and conspiracies, and the chances are that he will come out of law school with a vague conception of trade-unionism, and with considerable doubt as to the legality of its activities.

After leaving law school and being admitted to the bar,

the young lawyer does not immediately become a judge. He develops first a reasonably successful practice. This often means that he either becomes active in politics and develops his practice through political affiliations, or that he becomes associated with a legal firm having corporation practice, and thus devotes himself to problems that are essentially those of the employer. Judges are apt to be chosen from among lawyers who have had one of these two sorts of experience. In the one case the judge will have had a certain experience in following the dominant trend of opinion in his community. He will not have been a leader of forlorn hopes, nor will he have interested himself too much in unpopular causes or causes not yet fully established; that is not the stuff of which politicians are made. In the other case, if he has developed his career in corporation law, the chances are that he will have become imbued with a capitalistic or employer's philosophy before going onto the bench.

In his attitude toward the law, then, the judge on the bench is apt to follow what Professor Hoxie called the absolutistic instead of the evolutionary concept of society.[1] The courts are slow in recognizing changes in social and industrial life that require changes in the law if the government is to continue to be an instrument for furthering the welfare of man. The judge is apt to be influenced by his familiarity with the ancient doctrine of conspiracy. Combinations of wage-earners have not yet been able to shake off a certain atmosphere of illegality that has been created by the decisions of the courts and which has not been swept away despite the fact that combinations of laborers are no longer *per se* illegal. The

[1] Hoxie, *Trade Unionism in the United States,* chap. ix, "The Law in Relation to Labor."

tendency of courts, therefore, as has previously been pointed out, is to view with suspicion the attempt of men to do in concert what they may legally do as individuals.

The attitude of the judge toward the law is also modified by his individualistic concept of society. Nothing is more impressive in the various decisions, particularly those involving the constitutionality of laws that interfere with full freedom of contract between employer and employee, than the conception that the two parties to the conflict are two individual personalities of equal power. This conception is thoroughly embedded in our law, despite the fact that the employer may be a billion-dollar corporation and the worker an unskilled, untutored, immigrant laborer. To be sure, there are evidences of a different point of view. One of the most noteworthy is the statement appearing in the famous case of Holden *vs.* Hardy which upheld an eight-hour law for miners.[1] The court said in this case,

The legislature has also recognized the fact which the experience of legislators in many states has corroborated, that the proprietors of these establishments and their operatives do not stand upon an equality, and that their interests are, to a certain extent, conflicting. The former naturally desire to obtain as much labor as possible from their employees, while the latter are often induced by the fear of discharge to conform to regulations which their judgment, fairly exercised, would pronounce to be detrimental to their health or strength. In other words, the proprietors lay down the rules, and the laborers are practically constrained to obey them. In such cases self-interest is often an unsafe guide, and the legislature may properly interpose its authority. . . .
The fact that both parties are of full age, and competent to

[1] 169 U. S. 366.

contract, does not necessarily deprive the state of the power to interfere, where the parties do not stand upon an equality, or where the public health demands that one party to the contract shall be protected against himself.

Despite this evidence of an understanding of the real relationship between a corporate employer and an individual worker, it was only a few years afterward that the Supreme Court declared unconstitutional a ten-hour law for bakers in New York, and expressed indignation that there should be any interference with the right of adult men, capable of deciding matters for themselves, to work as long as they pleased.[1]

It must be recognized that the latter point of view has had greater weight in the determination of matters of this kind than has the former. The Fourteenth Amendment to the Constitution of the United States forbids any state to pass a law taking property without due process of law. Holding the carrying on of business to be a property right, the courts have brought the making of contracts within the protection of this amendment, and there is considerable evidence that courts have at times been more anxious to maintain the legal fiction of freedom of contract even to the worker's own hurt than they have been to promote the ends of justice. Hence, legislation to protect the worker against long hours and exploitation has had a long and weary road to travel in the courts.

As a result of the individualistic attitude of the courts, it follows that they are unable, in the main, to distinguish between acts that are individual and those that are social in their character. Consequently, the courts are perhaps most inadequate when handling crimes growing out of labor disputes. The traditional and typical attitude that

[1] Lochner *vs.* N. Y., 198 U. S. 45.

"murder is murder" may suffice to put in jail the particular individual who commits acts not sanctioned by social custom or the law, but when that act arises out of a vast complexity of social impulses and conflicting motives, it must be evident that the disposal of the individual contributes little if anything to a solution of the problem out of which the crime grew.

But the criminal aspect of labor conflict is only one phase of it, and that a minor one. The thing of chief importance is the attitude of the courts toward the great labor movement itself, battering away as it is against the inertia of custom and the intrenched privilege of vested rights. In the main, the courts are representatives of the point of view of those who have preserved intact those established things. As a result, it would seem that for the present, at least, the problem confronting the unions is as political as it is industrial.

READING REFERENCES

CLAGHORN, K. H.: *The Immigrant's Day in Court.*

CLARK, L. D.: *The Law of the Employment of Labor.*

COMMONS, JOHN R.: *Trade Unionism and Labor Problems,* 1921 edition, part 5.

COMMONS AND ANDREWS: *Principles of Labor Legislation,* 1920 edition, chap. iii.

COMMONS AND GILMORE: *Documentary History of American Industrial Society,* vols. iii and iv and Supplement—"Labor Conspiracy Cases."

FREY, JOHN P.: *The Labor Injunction.*

GROAT, G. G.: *Attitude of American Courts in Labor Cases.*

HOXIE, R. F.: *Trade Unionism in the United States,* chap. ix.

Interchurch World Movement. Commission of Inquiry. Report on the Steel Strike of 1919.

LAIDLER, H. W.: *Boycotts and the Labor Struggle.*

LANE, WINTHROP D.: *Civil War in West Virginia.*

SAYRE, FRANCIS BOWES: *Cases on Labor Law.* (For citations of articles dealing with the use of the injunction in labor disputes, see pp. 717, 759-762.)

U. S. Bureau of Labor Statistics, Bulletin No. 321. Labor Laws that Have Been Declared Unconstitutional.

U. S. Commission on Industrial Relations, vol. i, pp. 38-61, 92-100, 214-220; vol. xi, pp. 10451-10928.

PART IV
FUNDAMENTAL PRINCIPLES

INTRODUCTORY STATEMENT

THUS far unrest has been discussed as if it owed its origin to the physical discomfort of insufficient income, dangerous or disagreeable working conditions, and to laws or court decisions interfering with the direction of a successful attack against these economic handicaps. These are indeed among the tangible causes of industrial unrest, but sober reflection must suggest that they are the superficial rather than the primary causes. In a sense they are not causes at all, but rather the evidence of deeper-seated and more significant impulses and desires that are never satisfied by the adjustments of wages and hours that are commonly proposed. Unrest, dissatisfaction, demands for further concessions are still to be found in establishments that pay high wages, grant the eight-hour day, install safety devices, and recognize the union. These concessions may lessen the severity of the conflict, but they do not make an end of struggle.

There appear to be at least three characteristics of industry and the employment relation that are pertinent for discussion here. One concerns the relative interest of employer and employee in the ultimate product due to their co-operation. Another is the tendency in modern industry toward specialization, with its resultant monotony. A third is the definitely restricted status of the wage-earner. Of these three the first explains the permanency of the struggle over wages. The other two account for the dissatisfactions that exist independently of income or work

conditions. Through their denial of sufficient breathing space for the natural aspirations of men, they make indifference and disloyalty inevitable. In the next three chapters these statements will be amplified.

CHAPTER XVIII

THE INEVITABLE CHARACTER OF THE LABOR STRUGGLE

THERE are certain statements concerning the respective interests of the owners of capital and the wage-earners that pass currently from lip to lip with all the solemnity and assurance of ancient proverbs. One such common dictum is that "the interests of capital and labor are identical." Another, equally positive, declares that these same interests are "absolutely and diametrically opposed." The truth of the matter is not as simple as it may at first appear. Perhaps that is why there are such positive and at the same time contradictory views on the subject. Even among the laborers and capitalists themselves there is no unanimity of opinion.

In labor circles we find the more extreme groups, such as the I. W. W., holding the view that the interests of employers and employed are wholly and permanently opposed.[1] Within the groups making up the American Federation of Labor there are different points of view, ranging from the right to the extreme left. Many of the international unions affiliated with the Federation, in the preambles to their constitutions, or in other official pro-

[1] The I. W. W. preamble begins with this statement: "The working class and the employing class have nothing in common. There can be no peace so long as hunger and want are found among millions of the working people and the few who make up the employing class have all the good things of life. Between these two classes a struggle must go on until the workers of the world organize as a class, take possession of the earth and the machinery of production, and abolish the wage system."

nouncements, give express recognition to the idea of class struggle. On the other hand, there are elements within the Federation to whom that idea is as unpalatable as it could be to any employer or capitalist.

One of the most interesting evidences of this difference of opinion within the Federation is the controversy that has cropped up occasionally over the question of whether labor men should have any connection with the National Civic Federation, the membership of which includes employers and other capitalists as well as representatives of organized labor. Samuel Gompers is vice-president of the Civic Federation. The late John Mitchell, formerly president of the United Mine Workers of America, was an officer of this organization. Such association with capitalists seemed undesirable to the members of his union, and a resolution was adopted at a national convention declaring that no one could be at the same time a member of the United Mine Workers and of the National Civic Federation. As a result of this resolution, Mr. Mitchell withdrew from the latter body. An attempt to pass a similar resolution in a convention of the American Federation of Labor failed. This happened a score of years ago. But it all came up again at the convention of the American Federation of Labor held in Denver in June, 1921. Delegates of the Machinists' Union voted against Mr. Gompers for the presidency of the Federation in pursuance of a resolution of their own convention instructing machinists' delegates not to vote for any member of the National Civic Federation as an officer of the American Federation of Labor.

Employers, when they express themselves on the subject, generally assert that their interests and those of their employees are the same. Such a statement appears fre-

quently in publications devoted to the interests of the employer. Nowhere has it been stated more clearly or with more obvious conviction than by the late Frederick W. Taylor: "Scientific management . . . has for its very foundation the firm conviction that the true interests of the two (that is, employers and employees) are one and the same." [1] Mr. Taylor was so sure of this principle that he believed that collective bargaining would become altogether unnecessary as the science of management became better understood. Even the wage question he believed would be reduced to a scientific formula.

"The great increase in wages which accompanies this type of management," he said, "will largely eliminate the wage question as a source of dispute. But more than all other causes, the close intimate co-operation, the constant personal contact between the two sides, will tend to diminish friction and discontent. It is difficult for two people whose interests are the same and who work side by side in accomplishing the same object all day long to keep up a quarrel." [2]

[1] *Principles of Scientific Management,* p. 10.

[2] *Ibid.,* p. 143.

That this is not the view of all employers is indicated in a statement by Magnus W. Alexander, Director of the National Industrial Conference Board, a federation of employers' associations. In a discussion of the International Labor Office of the League of Nations, Mr. Alexander is quoted as saying: "Albert Thomas admits that the aim and ultimate results of the organization's efforts must be to benefit the workers by increased wages, reduced working hours, greater comforts, and a larger participation in management of industry and in the fruits of industrial production. *If so, employers must be deprived of some of their present privileges and emoluments.* In the nature of things, therefore, employer representatives at general conferences are in a position of continually opposing demands of the workers' representatives."—*New York Times,* February 25, 1923. Italics mine.

The public, in so far as it is possible to find a group which is in neither the employing or the employed class, is inclined to accept the doctrine of identity of interests of employer and employee. This view finds expression in the frequent reiteration of the statement that there are no classes in America. On this question the middle-class person of whatever sort is apt to be in agreement with the conservative employer and the equally conservative labor leader. Harmony of opinion on this subject was strikingly illustrated a few years ago at a meeting of the National Civic Federation, where the movement for compulsory health insurance for all persons with an income of $1,200 per year or less was under discussion. Such a project was indignantly repudiated by the counsel for the National Association of Manufacturers. The discrimination in the plan between those receiving $1,200 and those receiving more would, he declared, "create classes in America." In almost identical terms, spokesmen for labor unions at the same meeting denounced the project, one such spokesman denying that there are any classes in America and deploring any attempt to create them. For some reason no one rose to inquire why it is that paying people $1,200 a year does not create a class, but that calling attention to it does. However, these are undoubtedly the views of the average citizen, the so-called "man in the street." His conviction on this subject is probably not due so much to thinking the problem through as it is to a reaction against the idea of struggle between classes. The words "class struggle" seem to connote violent opposition and warfare. The desire to avoid any such disturbance in America leads, curiously enough, to a deliberate avoidance of terms in common use the world

over which are accurately descriptive of a condition that every competent observer knows to exist.

It is unwise, however, to express oneself in too positive or general terms concerning the interests of any group taken as a whole. As a matter of fact, in the business of producing goods there are many parties at interest. There are managers and technicians as well as stockholders on the capital side, and there are different groups of workers, skilled and unskilled, working on raw materials and on the finished product, whose interests are not always the same. Furthermore, both employers and workers are consumers, and as such sustain a relationship to the producing world as a whole that is different from their relationship to the particular business in which they are engaged. Yet it must be recognized that in striking the wage bargain the two parties directly concerned generally face each other simply as employer and employee, stripped for the most part of other relationships that might at another time or place modify their respective attitudes. That is, the influences that govern their conduct at such times are almost exclusively those arising out of the employment relationship. It is possible, therefore, to consider the relative interests of capital and labor as affected by that bargain.

To understand the matter it is necessary to consider the process of production at its different stages. It is clear enough that at the outset employer and employee have a similar if not an equal interest that production should be carried on. Each makes his living by producing goods. If none are produced, neither will have anything. Once the enterprise is under way, however, certain divergent or apparently divergent interests begin to emerge. Questions arise about which the interests of one group

seem to run counter to the interests of the other, such as the length of the working day, the manner of carrying on the work, the amount of labor to be required of an individual. These at least lead directly to difference of opinion, and the decision made often has a very important and opposite bearing upon the welfare of employer and employee.

The real controversy emerges, however, when the process of production has been completed, when goods have been placed upon the market and sold. The conflict which then appears and which is apparently inevitable and permanent concerns the division between employer and employee of the cash returns to the enterprise. It is a matter of the "division of the spoils." The conflict occurs at this point because production is not carried on by a single, integrated group. If it were so conducted all of the returns would pass immediately into the ownership of that group. There would then be questions to be settled as to individual distribution, but there would be no quarrel between two opposing sets of interests. Industry, however, is carried on by the joint efforts of two groups who work together, not as partners, but with one group as the owner and responsible conductor of the enterprise, the other as hired man. In other words, employers and employees do not form a connection and then jointly launch an enterprise. Instead, certain men able to furnish or secure the necessary capital decide among themselves to begin the production of goods. To do so they must purchase raw materials, machinery, and labor. They purchase these as cheaply as they can. If it is bricks they want, they bargain with some one who has bricks to sell. He gets the highest price he can; they pay the lowest price they can get him to accept. When pur-

chasing labor in general the same principles rule. The interests of buyer and seller are not the same, whether the thing purchased be a ton of coal or the labor of a man.

MODIFYING PRINCIPLES

It is apparent, then, that at two stages the interests of capital and labor tend to be opposed: in the carrying on of the processes of production where the line between identity and opposition of interest is sometimes hard to find, and in the division of the returns where there seems to be sharp and clear-cut opposition. The divergence in interest in the manner of carrying on production is an uncertain matter, because it is becoming increasingly apparent that there is a wide field here where interests are common.[1] It is reasonably clear, for example, that there is no sensible basis for conflict between employers and workers on the subject of plant safety. It is true that many employers in the past have failed to see that their interests lie along the line of maximum protection against

[1] It may be that if we had full ability to discern truth we should find the real interests of employers and employees in the process of production to be genuinely harmonious throughout. Professor Commons, in his report as a member of the U. S. Commission on Industrial Relations, said: "There are certain points where the interests of capital and labor are harmonious or can be made more harmonious. In fact, this field where there is no real conflict between employers and employees is much wider than at first might be imagined."

A similar idea has been advanced by Secretary Hoover: "It is idle to argue that there are no conflicts of interest between the employer and the employee. But there are wide areas of activity in which their interests should coincide, and it is a part of statesmanship on both sides to organize this identity of interest in order to limit the area of conflict."—"What America Faces," by Herbert Hoover, *Industrial Management*, April, 1921, p. 225.

accidents. The largest and most intelligent employers, however, now recognize that there is greater efficiency where the men are protected against dangerous conditions and where their health is conserved, and of course it needs no argument to show that the workers' interests are also served by being thus protected. The fact that good labor conditions are profitable to the employer does not in the slightest degree lessen their value to labor.

In addition to this, there are at least three modifying principles which must be taken into account with relation to the statement that in the matter of dividing the pecuniary returns there is an absolute clash in interest. In the first place, neither employers nor employees always represent a single group or interest. On the capital side there are the executives—who constitute management—as well as the stockholders. The desire of the latter is to secure the highest possible cash returns on their investments. The interests of the management group tend in that direction to a lesser extent. They are concerned with production for its own sake as well as with profits, which is apt to be the sole interest of the stockholders. However, their interests are not essentially different from the latter, for they represent stockholders and must protect them.

On the labor side there is apt to be less solidarity than on the side of capital, because of competition between individuals and groups, both for jobs and for wages. In particular, this is true where an industry is partially organized and partially unorganized, as in the case of the railroads. There is no question but that the strongly organized brotherhoods, representing the train crews, have been in a position to demand so large a share of the railroad income available for wages that the unorganized track laborers have received less than it might have been

possible for them to secure had their bargaining power been greater.

In the second place, there exists what has been called an enlightened selfishness. If his enlightenment is great enough, an employer may decide, like Henry Ford, to pay high wages for an eight-hour day and may profit tremendously by so doing. Mr. William C. Redfield, Secretary of Commerce in the Cabinet of President Wilson, writing a few years ago of his experience as an employer, said:

"Given the scientific spirit in management, constant and careful study of operations and details of cost, modern buildings and equipment, proper arrangement of plant and proper material, ample power, space, and light, a high wage rate means inevitably a low labor cost per unit of product, and the minimum of labor cost. . . . A steadily decreasing labor cost per unit of product is not inconsistent with, but on the contrary is normal to, a coincident advance in the rate of pay for the work when accompanied by careful study of methods and equipment as previously suggested. Conversely, low-priced labor nearly always is costly per unit product and usually is inconsistent with good tools, equipment, and large and fine product, else such labor would not be low priced." [1]

A third modifying principle lies in the widespread existence of a sense of justice which, wherever it appears, leads men to take into account the interests of others as well as their own. The labor of a man is not quite like a ton of coal, after all. Many an employer attempts to deal with his employees with a view to promoting their interests, even at certain points thereby slighting his own; though often enough he is astonished afterwards to find that it paid. In the same way many a workman faithfully

[1] William C. Redfield, *The New Industrial Day*, pp. 121-122.

tries to perform the best service of which he is capable without regard to the pay received.

It may seem that these modifying principles go so far that little is left of the theory of a controversy between capital and labor that is permanent and inevitable. They certainly do modify any theory that the interests of the two groups are opposed at every point, but they are not sufficient to dispose of the proposition that there is a final and certain clash over the division of the pecuniary returns. Despite the desire of an enlightened employer to pay the highest possible wages, it must be recognized that his conception of what is possible is modified materially by what he conceives to be his own rights or necessities. Mr. Redfield may be correct in saying that under a given set of conditions a higher wage will result in greater efficiency and therefore more profits, but it must be evident that the time will come when a further increment in wages cannot possibly result in any further increment in profits. Carry the principle further, and there can be no doubt that an increase in wages will mean a decrease in the employer's share. No employer, however fair-minded or altruistic, has any desire to bankrupt himself by paying constantly higher wages to labor.

The ultimate clash can be averted, therefore, only in case the workers are willing to refrain from further pressing their demands when doing so would jeopardize the interests of their employer. This they could not do with certainty in any case, for they have no means of knowing when that point is reached. The employer himself seldom is conscious of the exact location of the point of diminishing returns, and so tries to play on the safe side of it. But the fact is that the workers are not too greatly concerned about the employer's ability to pay, and will

not cease from pressing their demands even when it is reasonably certain that granting them will mean diminished profits or a loss. The attitude of the street-car employees is a case in point. During the war years, marked as they were by mounting costs, they did not hesitate to ask for higher wages from employers whose income they knew to be positively limited. It was pointed out above that the employer generally tries to buy his labor in the cheapest market, just as he would do in the case of raw materials. For the same reason, the workers try to sell their labor in the highest market. In this process, neither side is apt to give very much consideration to the interests of the other.

LABOR'S DEMANDS, LIKE THOSE OF CAPITAL, UNLIMITED

The opinion appears to be widespread that there should be an upper limit to the demands of labor. No one has stated in positive terms just what this limit should be, but it is evident that there is a substantial body of opinion that it ought to be at a point where only a fairly humble and pinched mode of living is possible. Only recently have sociologists begun to figure in a few comforts as a part of the basis for determining a living wage. Writers on this subject have suggested that wages should be high enough to supply a "modicum of comfort." A board of arbitration, in justifying its award, slightly increasing wages, expressed the belief that the employing company should see to it "that provision should be made for reasonable and moderate living expenses for all its employees." Pope Leo XIII in his Encyclical on conditions of labor in 1891 said that "the remuneration should be sufficient to maintain the wage-earner in reasonable and

frugal comfort." [1] Indignation is often expressed by editorial writers, by business and professional men and others not wage-earners, over a particular demand for higher wages, apparently on the ground that the wage asked for is more than a wage-earner ought to receive.[2]

Many people not only believe that there ought to be an upper limit to the demands of labor, but they expect the workers to have this point definitely in mind. The belief is held that at any given moment it is or ought to be possible to meet labor's demands; to grant such conditions as will be permanently satisfactory. Consequently, indignation is often mingled with amazement when, following what is considered a sufficient concession, new demands are made.

Those who hold such beliefs fail to understand the true attitude of the workers. They have no thought of a definite limit beyond which they will make no further demands.[3] If at any time a man should set such a limit for himself, when he reached it he would simply set it forward. Testifying before the U. S. Commission on Industrial Relations, Samuel Gompers made the statement that "the workers, as human beings, will never stop in any effort, nor stop at any point in the effort to secure greater improvements in their condition—a better life in all its phases." [4] And in an address before the Connecticut Fed-

[1] Quoted in McLean, *The Morality of the Strike*, p. 48.

[2] "Practically all employers determine upon a maximum sum which they feel it is right for each of their classes of employees to earn per day, whether their men work by the day or piece." —F. W. Taylor, *Principles of Scientific Management*, pp. 21, 22.

[3] "It mistakes about everything in human nature to think that labor will set limits to its climbing any more than the rest of us."—Brooks, *Labor's Challenge to the Social Order*, p. 125.

[4] U. S. Commission on Industrial Relations, Report and Testimony, vol. ii, p. 1528.

eration of Labor, Mr. Gompers is quoted as saying: "Organized labor is going to ask for more and more until it gets sufficient to have the comforts of life, what the worker is entitled to and the rich man enjoys." [1]

B. M. Jewell, president of the Railway Department of the American Federation of Labor, took the same position in arguing before the Railway Labor Board against a reduction in wages: "Out of the annual yield of any industry," he is reported to have said, "three things are being paid—costs (including supplies, depreciation, extensions, taxation, etc), wages, and profits. Two of these we say ought to be constant—costs (reduced to an economical figure) and wages, at a level which will allow full human life, inclusive of art, literature, music and recreation, and sociability such as is enjoyed by the well-to-do. This leaves profits as the sole variable factor, and frankly contemplates a situation in which temporarily they may have to cease. Until that situation has been accepted the conflict between capital and labor will continue." [2]

Those who find difficulty in understanding this attitude fail to take into account the fact that workers and employers are not essentially different in motive, that they are moved by the same set of impulses and that they possess, in the main, the same ideals.[3] Like other men,

[1] N. Y. *Times*, April 17, 1922.
[2] N. Y. *Evening Post*, March 27, 1922.
[3] A somewhat satirical comment on this state of mind appeared some time ago in an article published in the *News Letter*, organ of the Illinois State Federation of Labor, and written by John Walker, then president of the Federation. The article, which was entitled "The Double Standard," ran in part as follows:

"According to the double standard the workingman, no matter what his trade or calling, may not ask from

they are concerned about material comfort, and like the bulk of other men, their tendency is to strive without limit to increase their comforts, even if by so doing others suffer loss. In taking this attitude, they are just as impersonal as the employer who buys his labor in the cheapest market. The average wage-earner, like the average employer, is thinking of his own interests, not those of

> his employer a wage or return for his labor that exceeds the employer's conception of the value of his labor. Indeed, it is accepted generally that he must not even ask all that his labor service is really worth. . . . If the worker, under any circumstances, by any chance, presumes to ask a wage in excess of the value of the service rendered, and the employer can show that to be true, then everybody universally condemns the worker for being nothing short of a thief. That is one side of the present double standard—the side used to judge the worker.
>
> "The other side of the present standard, the method by which the employer is judged, is exactly opposite. When the remuneration of the employer, his wage or profit, is under consideration, the value of his labor or of the actual service he renders is not given much thought. . . . The more an employer, or business man of any kind, is able to get for the least service or work performed, the more successful he is considered. Instead of being condemned and branded as a thief (like a workingman who asks more than his labor is worth) the business man is given credit for being exceptionally shrewd and smart. To be considered a shrewd and sharp business man even under such circumstances is, in the estimation of our people, a high honor instead of a mark of dishonor. . . . Because the double standard has become accepted as being right, not alone by the employers and business men, but by a considerable portion of the workers themselves, and because these are the ethical laws governing business and economic life, the never-ending conflict goes on. No business man or employer can get wealth that they did not actually and honestly earn without taking it from some man or woman who had earned it. As long as that kind of thing obtains, there can be no peace—there should be no peace. Honest men must fight."

other people. Consequently, the unions are never satisfied. Those organized employees receiving the highest wages paid in industry are just as quick to come back and ask for more as are the underpaid and exploited workers. It is no more to be expected of wage-earners than of employers that they will withdraw from the conflict and say, "We have received what is our share." At the same time it should be pointed out that the organized workers are capable of taking a practical view of these matters. Their desires may be unlimited, but the fulfillment of these desires at any given time depends upon the productive resources of society. The workers are not unmindful of this, though their ability to act in accordance with it depends a good deal on the amount of reliable information they possess concerning the particular industry in which they are employed.

If these two principles—that is, the divergence in interest between employer and employees, and the limitless character of labor's aspirations—are not understood, efforts to deal with the industrial struggle are apt to go wrong. Any plan of amelioration which is based upon the idea that it will make an end of dissatisfaction and unrest is sure to end in disappointment. Every improvement of the condition of the wage-earners merely raises the struggle to a new level What has been in the past successively a struggle for emancipation, for political rights, for a living wage, will continue to be a struggle for an increasing share of the world's goods. If these principles are understood, it may be possible for the relations of employers and employees to be so adjusted as to avoid the harsher aspects of a struggle that under any conditions is inevitable.

READING REFERENCES

(The writer has not found anywhere an extended discussion of the specific matters treated in this chapter. They are frequently referred to, however, in various textbooks and other publications on economic subjects. The following is a list of such publications, together with the page upon which the discussion appears.)

ADAMS AND SUMNER: *Labor Problems,* p. 301.

BOLLES, A. S.: *Conflict Between Capital and Labor,* p. 74.

BRYCE, JAMES: *Modern Democracies,* part i, p. 38.

GLADDEN, W.: *Working People and Their Employers,* pp. 33-35.

KING, W. I.: *Wealth and Income of the People of the United States,* p. 154.

KNOEPPEL, C. E.: *"The Inevitable Antagonism Between Employers and Employees," "Management Engineering,"* vol. ii, No. 3, p. 331, March, 1922.

LITCHFIELD, P. W.: *The Industrial Republic,* pp. 25-29; 38-39.

MACIVER, R. M.: *Labor in the Changing World,* pp. 28-38.

PORTENAR, A. J.: *Problems of Organized Labor,* p. 28.

SELIGMAN, E. R. A.: *Principles of Economics,* p. 427.

TEAD, ORDWAY: *Course in Personnel Administration, General Introduction.*

WALKER, F. A.: *The Wages Question,* p. 291.

CHAPTER XIX

THE ELIMINATION OF CRAFTSMANSHIP

THE basis was laid for one of the most persistent and insidious forms of unrest at the very dawn of the factory system. The process which took the workman out of the home and put him into a factory was the beginning of the end of the self-sufficiency of household or farm. Since that time there has been a development, slow at first, but later accelerated, from individual to group craftsmanship. The average workman in the modern factory either tends a machine or, as a member of a group, he performs a specialized individual task, insignificant in itself, the combined work of the gang resulting in the finished product.

To be sure, the craftsman is still here. In the building trades he survives, and he is to be found in small specialized shops; there is interest and variety in the work of the freight-brakeman, the locomotive engineer, the motor mechanic. But in the modern factory the craftsman is of less and less importance. Factory workers do not make things. They make parts of things. They do not build ships, construct locomotives, weave cloth, or make watches or shoes. They punch holes and fasten bolts; they pound rivets and pull levers. A man stands in front of a punch press and feeds pieces of metal into it. He steps on a trip and the machine punches a hole. He takes that piece out and puts another in. On his right are strips of steel to be punched; on his left the finished product. He may

or may not know what the ultimate purpose is. He may be helping to make ships that sail the seas or airplanes that ride above the clouds; but he is a maker neither of ships nor of airplanes. He is a maker of holes.

Bertrand Russell has expressed himself forcibly on the point:

> The chief defect of the present capitalistic system is that work done for wages very seldom affords any outlet for the creative impulse. The man who works for wages has no choice as to what he shall make: the whole creativeness of the processes concentrate in the employer who orders the work to be done. For this reason the work becomes a merely external means to a certain result, the earning of wages. Employers grow indignant about the trade-union rules for limitation of output, but they have no right to be indignant, since they do not permit the men whom they employ to have any share in the purpose for which the work is undertaken. And so the process of production, which should form one instinctive cycle, becomes divided into separate purposes, which can no longer provide any satisfaction of instinct for those who do the work.[1]

Some time ago I had a very vivid illustration of the prevailing tendency. It was in the assembling end of an automobile factory. Piles of material lay on either side of long tracks running down the length of a great building—pieces of steel, rods, plates, nuts and bolts, wheels, and other things. Away back at the beginning of the line, a workman seized a rod and laid it down on the track. Another workman laid another rod across it, and a third fastened them together with a bolt. Then a man appeared with a rear axle, and laid it on top of the rods where the bolt holes came right; another put bolts in

[1] Bertrand Russell, in *Why Men Fight*, pp. 145-146.

place; another started the nuts on the end of the bolts with his fingers; a fourth tightened them with a wrench. In the same way the front axle was put on; then men stepped out with the wheels, already equipped with tires, and thrust them on the axle ends. The nuts were clapped on and screwed up, and the partly completed machine was given a shove forward. Suddenly above, dangling from chains, appeared the motor. Men seized it, put it into place, and fastened it with bolts. On again, and the steering gear appeared in the same way; other men fastened that in place; then the gasoline tank. Another shove and there was a hose dangling from above. Some one seized it and into the tank spurted a quart of gasoline. One more shove and the rear wheels dropped into grooves in the track where there were revolving pulleys. The wheels began to turn, the engine started, a man jumped aboard, seated himself upon the tank, grabbed the steering wheel, cut loose—and out of the door went an automobile. It had not been ten minutes since that first rod had been thrown down on the track; it was less than ten minutes from those piles of cold inert pieces of steel at one end of the building, but here at the other end was an automobile, moving and thrilling with power.

What a magnificent workshop, I thought. Here were men who worked all day in this place of miracles; more than that, they were themselves the workers of miracles. Then I looked closely at the men and I saw that it was not a miracle, after all. The men did not see any vision. They were not making automobiles. They were placing rods in the right place; they were making bolt holes coincide; they were starting nuts with their fingers or tightening them with wrenches. One man was a specialist in putting on the left hind wheel; another inserted bolt num-

ber 43. No miracle men were here. They were American workmen holding down their jobs and watching the clock.

At another time I stood watching where men worked in long lines on a partly completed piece of machinery, which passed along in front of them on a slowly moving table. Somewhere down the line there was a boy with a large can full of wooden plugs. As each partly assembled machine reached him on the moving table he took a plug out of his can and drove it with a hammer into a bolt hole. The thing passed on and another one appeared; he picked up another plug and drove it into a bolt hole. That was his sole contribution to the process of manufacture. It was puzzling, and I turned to my guide, who was the safety engineer of the plant, for information. He too was mystified and said, "Let's ask the boy." We did so, and discovered that he had no more idea of what his job was for than we. Just then the foreman came by. He too was unable to enlighten us as to the purpose of this plugging of holes. By that time we were interested. We carried the matter up to the department superintendent. He knew all about it and explained clearly why the operation was necessary. Our curiosity satisfied, we went on. We did not return to the boy with the can of plugs. So far as we knew he never found out why his job was necessary. No one had told him, and even if it had occurred to him to ask he could not have found out because his boss didn't know. Yet this was his means of livelihood.

These two illustrations represent a certain tendency in American industry. To a certain degree it is typical of all industry. Everywhere there is a sharp division between planning and execution, and the opportunity for the workman to develop initiative and use his own brain power is very limited. But it is in manufacturing that the ten-

dency has gone farthest, and here everything indicates that specialization is on the increase.

The significance of this tendency lies in its spiritual and economic effect on the individual workman. We often speak of "working for a living," as if keeping alive were the only thing worth working for. As a matter of fact, men do not do their best work for money, but rather through loyalty to an idea, or to a principle, or to some personality, or on account of the joy of the work itself. I have often met factory workers in their homes working with their own tools with a zeal that would have strained the credulity of the shop foreman, on the construction of some article for the use or pleasure of the home. An experienced engineer writes:

The workman who will loaf with consummate skill during the day may, at night, work very hard upon a doll's house for his little girl, lavishing upon it all the tender care of craftsmanship. He has no interest in his daily task, but he has a deep interest in the home job that he has set for himself. Is this the fault of the man or of the job? Why should he be interested in one and not in the other? Both are work, and the second will not bring a financial reward.

The difference is that in the factory job he probably does not know what he is doing; he is simply going through a monotonous routine and doing certain work because he is told to do it, and without an idea of just what part he plays in the final product, what his relative importance is, or what is the value of that with which he is working. He has no measure of personal responsibility in the factory as high as that of the machine he operates. There is nothing to draw out of him the natural and fundamental instinct of creation. But when he is building the doll's house the situation is different. He is making something of his own. It will reflect credit or discredit upon him, according to the skill

that he puts into it. He knows the cost of everything that enters, because the money for the material comes out of his own pocket. He will spend whatever is necessary to achieve the result that he desires—but not a penny more. He is fulfilling the ideal of creative work.[1]

The pleasure that men take in their hobbies is evidence of the existence of an instinct that does not find full expression in the work that they do for bread and butter. This is the desire to create, to be master of inanimate things, to direct their shape and destiny. There are few joys in life comparable to those which spring from original achievement. It is a matter of common observation that the thrill that one feels over the work of his hands is experienced not only by those who are commonly known as artists, but by all sorts of people. The business man who occasionally does odd jobs at home around the house has a feeling of pride in his own carpenter work. The art of cookery has its satisfactions to the housewife. You cannot compliment her more highly than by praising her cake. Indeed, the pride of craftsmanship is so strong that workingmen, even when employed at unskilled labor and at work that they do not like, want other people to think that it is important, and that not everyone could do it.

There is a kinship between artists and workers everywhere, if the worker has any chance to put his thinking into his work. To be sure, the artist dreams out the details of a picture, or an angel in marble, while the average individual has to be content with a humbler mode of expression. But the average man, the average wage-earner, has his visions, too, and if he be given opportunity to work, he accomplishes a piece of artistry just as surely as does

[1] Wm. R. Bassett, *When the Workmen Help you Manage*, pp. 79-81.

the painter. For he must first have a conception of the thing to be done; he must see the object to be accomplished in his mind's eye; and then with his hands he makes the vision a reality. John P. Burke, president of the Pulp, Sulphite, and Paper Mill Workers' Union, is quoted on this point by Robert B. Wolf, as follows:

When I worked in the factories, which I did from the age of twelve to twenty-five, one of the things I found the most dissatisfaction with was the deadening sameness of the work. I never remember a time, when working in the factories, that I became so interested in my work that I didn't long for quitting time to come. After leaving factory work I got a job with a building contractor. Becoming proficient as a carpenter, I time and again did certain work of a more or less creative nature; I often became so interested in it that I paid no attention to quitting time. I have worked for two or three hours after the time when I might have quit work. There is joy in creative work.[1]

The fact that in manufacturing at least there is very little opportunity any more for creative work is undoubtedly one of the great causes of industrial unrest. To a large extent this lies at the root not alone of the more obvious forms of unrest, but of the restless movement from job to job, from factory to factory, of workers who are seeking, whether consciously or unconsciously, for satisfaction in work.

The economic effect of this development has been an increase in output, with more profits to the manufacturer. It has meant lower prices to the consumer. The workers as consumers have shared in these benefits, but as workers they have suffered loss. They have been degraded

[1] Quoted in "Making Men Like Their Jobs," by Robert B. Wolf, *System*, January, 1919, pp. 34-35.

by the destruction of their skill. They have become a less important and less responsible factor in production. It may not have led in many cases to actual reductions in wages, but it has held back the development of individuals, and has made possible the hiring of cheaper men. As the years have gone by, this has tended to make increasingly insecure the economic position of the worker. The bulk of the labor of the modern factory tends to consist of unskilled or semi-skilled workers at lower rates of pay rather than of skilled men at higher rates.

Factory work, furthermore, as a result of specialization, has to a large extent become monotonous, uninteresting, and distasteful. Under normal conditions men enjoy work. When there is free play for imagination and the creative impulse, they look forward to it, after intervals of leisure, with eagerness. No one will maintain that this is the state of mind of the typical American factory worker. There is even something almost amusing in the thought of workmen rising in the morning impatient to get back to the factory. Everyone knows that that is not their feeling. There is weariness of mind, indifference, distaste, when men ought to be alert and eager. Consequently, they go to work with reluctance, and work with an effectiveness far below their powers.

That this state of mind is not peculiar to American labor is indicated in a vivid passage by an English author.

Though there is ample evidence that among all peoples, in some early or precivilization period, life has appeared as worth living, and work as something attractive and enjoyable, yet there is no doubt that in the later centuries the conditions of industry have ingrained into men's minds an opposite view. If any enthusiast to-day were to descend into one of our big towns and, standing at a street corner, to preach to the

passers-by about the "pleasures of work," or to urge them to the easy task of making life "really enjoyable and beautiful," the crowd, I fear, putting their thumbs to their noses, would break out in scornful laughter or perchance, turning on the speaker, would stone him with stones—even as they stoned Stephen at Jerusalem when for him the heavens opened and he saw in a vision the Son of Man standing at the right hand of God.[1]

This aversion to work is a fact well recognized by modern employers. Absenteeism, lack of punctuality, and inefficiency are accepted everywhere as problems to be dealt with. Some employers offer a money reward for efficiency. Industrial leaders have come forward with the idea of the task and bonus. A task is the amount of work that an average worker might reasonably be expected to accomplish; the bonus is the reward that is offered if he does accomplish it. It is something in addition to the wage, and is offered as a bait to induce him to do a good, honest day's work. There are bonus payments for punctuality or for regularity. Vacations with pay are offered to those who have a good attendance record through the year. Schemes of profit sharing are devised. Pension plans and other forms of insurance are worked out—all with a view to inducing the employee to "take an interest" in his work or to develop "loyalty."

The labor remedy for the situation is different. Labor men and reformers propose a short workday, preferably one of eight hours or less. Their purpose is to rescue the individual from the monotonous grind, and they would do this for his own sake, not for the sake of industry. They do not care so much about making him a cheap and swift operative as they do about giving him an opportunity

[1] Edward Carpenter, *Towards Industrial Freedom*, p. 52.

to develop his own individuality. Nothing, they believe, will recompense the worker or enable him to live and develop in a normal way except such a schedule as will leave him time enough after working hours to exercise mind and body and to find in his own way some satisfactory method of self-expression.

As remedies for the evils of the modern factory system, neither of the plans just outlined seems sufficient. Both of them are based on the apparent assumption that work, for its own sake, never can be made worth while. Both of them leave the job just where it was. It is a confession of failure, if we can think of no remedy for a bad situation except bribing men to endure it, or shortening their hours so they may have as little to do with it as possible. There are good reasons for a short workday, and intolerable work conditions may be one of them. But a more constructive plan would seem to involve an attempt to make industry tolerable, rather than so impossible a procedure as letting it alone.

If factory employment is to become tolerable, some way must be found to put back into it something of the joy of work of which it has been robbed.[1] There must

[1] Hoxie, in speaking of the effect of the industrial revolution in the breakdown of craftsmanship, the destruction of crafts, and the carrying of the industrial world forward toward an era of specialized workmanship, has said: "No solution or series of solutions offered for this problem can be considered at all adequate which does not meet the needs of such a situation. It is a long-time problem which requires a long-time solution. What is really needed, under the circumstances, is not so much repression and direct control as social supplementation and increased knowledge. The main demands are a frank recognition of the trend of events and *for some method of putting back into the worker's life the content which he is losing as the result of increased specialization and the abandonment of the old apprenticeship system.*"—*Scientific Management and Labor*, pp. 135, 136. Italics mine.

be in it something that will make an appeal to the imagination. Adults at their work are not wholly different from children at their play. Work and play alike cease to be engaged in with spirit, and they lose their educational value at the very moment when they no longer possess untried possibilities or mysteries as yet unsolved. Three ways have been proposed for restoring to industry that which will give it the atmosphere of adventure: education, opportunities for visualizing the work as a whole, and participation in making decisions.

Education of the right sort contains an obvious stimulation to the imagination. Modern educators desire to stimulate the imagination in order that their pupils may become useful citizens and at the same time realize to the utmost the joy of living. If what has been set down here concerning the conditions now existing in industry has any validity, however, it seems probable that if such objectives in education were widely attained, the resulting product would be one for which there is a limited demand. The question may well be asked whether a service has been rendered to the youth of the land if imagination be awakened and then opportunity for its exercise cut off.

To a limited degree within the factory it is possible to alleviate the monotony of specialized labor by giving the worker an opportunity to visualize the entire scope of the work in which he is engaged. The simple and meaningless task performed by the individual may take on significance if he sees and understands the operations that precede his own and those that follow. He may then feel that he is making an essential contribution toward the completion of the finished product. This end can be obtained in part by shifting the worker from job to job as often as is consistent with satisfactory output, and in

that way acquaint him with as large a variety of operations as possible. There are practical limitations to this method which are fairly obvious. It may be impossible to shift each worker often enough to relieve the monotony of the specific tasks in which he is engaged, and the number of different tasks to which most of the workers in the plant would be adapted might in any given case be sufficiently limited to lessen very greatly the value of the procedure.

Another method that has been employed is to show the workers moving pictures of the various operations throughout the plant. Thus in a single sitting each worker might have an opportunity to grasp the work of the entire shop. Educational classes might be and often are arranged where, by means of lectures, pictures, and demonstrations, the work of the factory is made clear.

How important this sort of procedure may be is indicated by an experience which is described by a man responsible for the training of executives in a very large American factory. Young engineers just out of technical schools were brought into the plant and the first plan, which seemed the logical one, was to familiarize them with the work of the establishment by sending them through the plant and having them work at the different processes, beginning with the raw material and going right through to the finished product. This was found to be inadequate, however. The men discovered that they were much of the time doing work the significance of which they could not understand because they were not acquainted with the processes that followed. Accordingly, the process was reversed, and the men were placed first in the assembling department, where every mechanical process having been

completed, the parts were fitted together into the finished product.

Important as this procedure is, it has great limitations. It must be regarded as a helpful procedure, but possibly trifling in comparison with the magnitude of the problem of so associating the worker with the great process of manufacturing as to obtain for him the satisfactions that work should hold. Far more important, therefore, is the proposal that he should participate in the making of decisions. This participation may include, in particular, two sets of problems, those involving shop adjustments, and industrial relations; and those involving production or manufacturing problems. The field of industrial relations is the familiar one of hours, wages, and various adjustments, including discipline. These are the matters with which unrest and agitation have been concerned since the beginning of the factory system. It has taken a long time for employers to understand that the workers may be better satisfied and have a greater assurance of justice by assisting in the making of decisions concerning these important matters. Nowadays in the more intelligently managed factories a steady tide is flowing in the direction of the appointment of shop committees to advise the management with respect to these very things. Sometimes the committees are purely advisory in character, the final decisions being left to the management. In other cases the employees have some real power in determining the final arrangement.

The more common method of participation, and the one by which the employee feels a greater assurance that his attitude will really be respected, is, however, not the shop committee, but the union. The reasons for this were stated in some detail in Chapter XIII. But whether it

be a shop committee or a union, if there is opportunity for active participation in the making of policy, the employees concerned acquire a sense of greater responsibility and a more intelligent appreciation of the problems of the industry. Such a procedure affords an opportunity for the workman whose daily task at his bench does not give him the feeling of worthwhileness and responsibility that is essential if he is to become an important citizen in his group and thus experience the full development of his self-respect. Indeed, it is altogether likely, as Helen Marot has pointed out, that many a workman joins the union not alone for the purpose of securing higher wages, but for the purpose of obtaining the opportunity for self-expression that is denied him in his daily task.[1]

Other shop problems that need to be adjusted and require the intelligent co-operation of the workman are those involving safety, shop hygiene, etc. Those industries which have been most successful in their safety campaigns have been those which have organized committees of their employees for the purpose of studying accident hazards and making recommendations regarding measures to be taken in the direction of greater safety. It is interesting to note that many of the employing corporations which are most hostile to any other form of organization of their employees have made use of safety committees with the most satisfactory results. They have found that by giving some responsibility to the workers they have shown themselves deserving of responsibility. In this limited field they have proved the value of getting 100 per cent of the brains of the factory at work upon the problem in hand. This is an indication of what might be expected if the factory were so organized as to concentrate all the brain

[1] Helen Marot, *The Creative Impulse in Industry*, pp. 70-71.

power of the establishment upon the other problems that are pressing for decision.

There have been fewer experiments in the direction of permitting the worker to participate in decisions concerning production or manufacturing problems. This is a field from which the worker has in general been rigorously excluded. Among the problems in which the wage-earner is vitally interested are quality and quantity of output, manufacturing methods, elimination of waste, and the regularization of industry. In many a shop a beginning has been made in this direction by putting up boxes into which employees are invited to drop suggestions regarding changes in any department of the shop or its work. Prizes are sometimes offered for suggestions of value, and many an invention, saving money for the management, and increasing output, owes it origin to suggestions which have come from these boxes.

Another method by which employees may be made to feel that they are a more vital part of the industry is by promotion from lower ranks to the higher, and by constant training which will fit the workers in the lower positions for the position next ahead. In one large shoe-manufacturing company of the East, every foreman is supposed to be training his successor, and this is carried on on such a scale that 20 percent of the employees are constantly in training for foremanship. In the same establishment, when anything involving mechanical processes goes wrong in a department, the men at the machines are brought into the office to talk things over. Often the necessary suggestion for meeting the difficulty comes from the workers in these meetings, but whether their suggestions are helpful or not, every man goes back

to his machine after such a conference, feeling that he is an important factor in the organization as a whole.

A most interesting experiment in the direction of bringing the worker into responsible connection with management was that of Robert Wolf, in the paper industry, at Berlin, New Hampshire, and at Sault Ste. Marie, Canada. This experiment has been frequently described.[1] Mr. Wolf himself has presented before engineering societies and in technical journals the essentials of his experiment. Briefly, what he did was to consult the employees about the manufacturing problems with which he was concerned. He explained to them his difficulties and the problems to be solved. He enlisted their enthusiasm and their assistance in discovering the best methods to be followed. Having agreed with the employees as to the best methods, it was found possible to keep quality records showing day by day the accomplishments of each man or crew. Matters were so arranged that the men were able to keep a chart of their own progress, and every man became enthusiastic about improving his product, and if possible getting to the top of the list. As a result of these methods, Mr. Wolf was able to report that in a period of a few years at the Berlin plant, without increasing the force of men, output increased 100 per cent, and quality in about the same proportion.

Another more recent effort in this direction has arisen as the result of a plan worked out jointly by the officers, respectively, of the Baltimore and Ohio Railroad and of the International Association of Machinists. Under this agreement the machinists have engaged their own engi-

[1] Helen Marot, *The Creative Impulse in Industry*, pp. 35-43. W. R. Basset, *When the Workmen Help You Manage*, pp. 111-112.

neer to assist in eliminating waste and in promoting efficiency in the repair shops of the railroad.[1] This plan has not been in operation long enough to warrant the drawing of conclusions, but it opens up certain possibilities that are worth thinking about.

Such experiments as these have not been carried on in many places. Seldom are there to be found the courage and the spirit of adventure which would lead those responsible for production to depart so far from the beaten path. But wherever the workers have been brought into responsible association with management, the results have indicated pretty consistently that more intelligent and more efficient workmanship is to be expected. These experiments suggest what might be accomplished if the thinking and the imagination of the workers of the world could be harnessed up and directed to the accomplishment of useful ends.

READING REFERENCES

BASSET, W. R.: "Developing Pride and Interest in the Job," *Factory,* vol. xxii, pp. 693-696, April, 1919.

——— *When the Workmen Help You Manage.*

CARPENTER, EDWARD: *Toward Industrial Freedom,* chap. iv.

CORLESS, C. F.: "Industry, Democracy and Education," Bulletin No. 148, American Institute of Mining and Metallurgical Engineers, April, 1919.

HOBSON, J. A.: *The Evolution of Modern Capitalism* (1916 edition), chaps. xii and xiii.

HOOVER, HERBERT: "What America Faces," *Industrial Management,* April, 1921, p. 225.

[1] O. S. Beyer, Jr., "The Employee Morale Problem of our Railroads," *Railway Age,* October 13, 1923; "Cooperation between Organized Labor and Management on the Railroads," *Machinists Monthly Journal,* October, 1923, p. 474; "B. and O. Engine No. 1003," *Survey Graphic,* January 1, 1924, p. 311.

HOXIE, ROBERT: *Scientific Management and Labor.*

——— *Trade Unionism in the United States,* chap. xii.

LLOYD, ERNEST F.: "The American Automatic Tool," *Journal of Political Economy,* June, 1919, p. 457.

MAROT, HELEN: *The Creative Impulse in Industry.*

RUSSELL, BERTRAND: *Why Men Fight.*

TEAD, ORDWAY: *Instincts in Industry,* chap. iv.

TEAD AND METCALF: *Personnel Administration,* chap. xv.

VALENTINE, ROBT. G.: "Human Element in Production," *American Journal of Sociology,* vol. xxii, pp. 30-37, July, 1916.

WEBB, SIDNEY AND BEATRICE: *Industrial Democracy,* part ii, chap. vi.

WOLF, R. B.: "Control and Consent," *Taylor Society Bulletin,* vol. iii, no. 2, pp. 5-20, March, 1917.

——— "The Creative Workman," reprint from *Paper,* vol. xxii, no. 18, July 10, 1918.

——— *Individuality in Industry,* Society to Promote Science of Management, vol. i, no. 4, pp. 2-8, August, 1915.

——— "Making Men Like Their Jobs," *System,* vol. xxxv, pp. 34-38; 222-226, January-February, 1919.

——— "Securing the Initiative of the Workman," *American Economic Review,* vol. ix, Supp., pp. 120-121, March, 1919; also *Survey,* vol. xli, pp. 620-625; also *Monthly Labor Review,* U. S. Bureau of Labor Statistics, vol. viii, pp. 1684-1686, June, 1919.

——— "The Use of Non-Financial Incentives in Industry," *American Society of Mechanical Engineers Journal,* vol. xl, pp. 1035-1038, December, 1918.

CHAPTER XX

THE WAGE-EARNER'S RIGHTS

THE labor movement, whatever its superficial aspects may be, is essentially a movement in the direction of a changed status for the wage-earning class. The inevitable tendency, even of the American labor movement, most of whose leaders would deny it, is in the direction of changes that are fundamental. This is so because the relation of wage-earners to industry, whether all of them realize it or not, is such that they do not possess full equality of rights as compared with their employers. Despite social advance, and changes bringing better work conditions and more comfort in the matter of every-day living, the fact remains that basically the relation of the wage-earner to industry and to the entire social structure is different from and essentially inferior to that of the property owner. In the matter of assured rights with respect to the process of making a living, the propertyless wage-earner has little that is comparable with those possessed by more fortunate members of society.

Of course, the wage-earner is always more than wage-earner. He is citizen and consumer; he is either householder or tenant; he may be capitalist or landlord. In each of these various rôles he possesses certain rights and obligations peculiar to that rôle. Here, however, we are interested in him chiefly as wage-earner. His rights and standing in that single relationship have a profound influence on all his other relationships. In considering his

legal and economic status, therefore, we are concerned with his relation to industry and his rights therein, as separate facts, and as compared with the relation and rights of other groups, principally the owners of property.

The principal right possessed by an individual wage-earner is that of granting or withholding his services. By the individual exercise of this right a worker may choose between attractive and unattractive employment, if such an alternative presents itself. When labor is scarce, the exercise of this choice will have a certain influence on employment policies. Employers competing for labor will endeavor to establish such conditions as will be attractive to prospective employees.

The importance of this right cannot possibly be over-estimated. It represents the distance that separates the wage-earner of to-day from the serf or the slave of earlier periods.[1] It is the ultimate source of whatever power of self-protection the wage-earner possesses. It must be recognized, however, that in practice it is a limited right. It can be exercised only when jobs are plentiful. A man can choose between two jobs only when there are two jobs. When only one is available, or less than one, on account of an excess in the labor supply, his theoretical right of choice is of little avail. His choice then lies, not between two jobs, but between work or no work, between the job that is offered and no income. In such a case the right of choice still exists, but the wage-earner, as a practical matter, is unable to avail himself of it. The existence of a purely theoretical right of this sort naturally

[1] "It is in the wage-earner's power to throw up his job when he likes that his status differs most essentially from that of a slave."—Webb, *Industrial Democracy*, 1914 edition, p. 432.

exerts no influence over the conditions of work, for at such a time employers are not competing for men.

The second important right of the wage-earner is to combine with his fellows for the purpose of collective action or a concerted withholding of service. By such combination the significance of the individual's right to quit is very greatly increased. As a matter of fact, it is only the concerted and simultaneous withholding of services by a group of workers that amounts to very much in the way of influence over working conditions. Even in times of industrial activity the loss of a single workman is not ordinarily a matter of great consequence to the employer.[1] But the loss of a hundred or a thousand workmen all at once is a matter of consequence, not only in times of activity, but in duller times as well. Organization, therefore, strengthens tremendously the bargaining

[1] "If the foreman, and the capitalist employer for whom he acts, fail to come to terms with the workman, they may be put to some inconvenience in arranging the work of the establishment. They may have to persuade the other workmen to work harder or to work overtime; they may even be compelled to leave a machine vacant, and thus run the risk of some delay in the completion of an order. Even if the workman remains obdurate, the worst that the capitalist suffers is a fractional decrease of the year's profit. Meanwhile, he and his foreman, with their wives and families, find their housekeeping quite unaffected; they go on eating and drinking, working and enjoying themselves, whether the bargain with the individual workman has been made or not. Very different is the case with the wage-earner. If he refuses the foreman's terms even for a day, he irrevocably loses his whole day's subsistence. If he has absolutely no other resources than his labor, hunger brings him to his knees the very next morning. Even if he has a little hoard, or a couple of rooms full of furniture, he and his family can only exist by the immediate sacrifice of their cherished provision against calamity or the stripping of their home. Sooner or later he must come to terms, on pain of starvation or the workhouse."—Webb, *Industrial Democracy*, 1914 edition, pp. 655-656.

power of the individual. It makes possible a far wider and more permanent influence over working conditions by modifying and at times neutralizing the law of supply and demand in the labor market.

In considering the importance of this right, it is necessary to point out, however, that, like the right to quit, it may at any time become a theoretical rather than an actual right. The right to organize is always subject to the counter right of the employer to prevent organization if he can. The increase in bargaining strength that goes with organization constitutes such a limitation on the employer's bargaining power that opposition is frequent and very strong. As a rule, the wage-earner, if he wishes to avail himself of the right of collective action, has to fight for it. Furthermore, it must be noted that the right of organization, with all that it implies in the way of collective bargaining and strikes, is not an absolute right. The courts may interfere and restrain organized activity, not on the ground of violation of pre-existing law, but because the court disapproves of the action proposed. The Massachusetts Supreme Court in a leading case declared that a strike is not necessarily legal "because the strikers struck in good faith for a purpose which they thought was a sufficient justification for a strike. As we have already said . . . the purpose of the strike must be one which the court, as a matter of law, decides is a legal purpose. . . ." [1]

The legislature, too, may intervene to limit the right of collective action. In Colorado, under the Industrial Commission law, no strike can legally take place until thirty days after the Commission has been notified of the inten-

[1] De Minico *vs.* Craig, 207 Mass. 593.

tion to strike. In Kansas, strikes in industries "affected with a public interest" are wholly illegal.

In addition to these interferences with complete freedom in the exercise of the right of organization and collective bargaining, it must be noted that even where resort to collective action has not been interfered with, there is no assurance of a continuance of the advantages secured. Just as the employer, by discharging members of a union, may prevent his employees from organizing, so, under conditions favorable to his purpose, he may destroy an organization that has already secured a foothold and restore individual bargaining in his plant. Anything that increases the supply of labor, such as immigration, when there is no proportional increase in demand, tends to weaken the organizations and make their destruction easier. Again, the introduction of machinery, with the consequent destruction of a craft so weakens the fighting strength of a group that their organization may be destroyed.

Organization has persisted, of course, despite these obstacles, and has slowly grown in strength and influence with the passing of the years. The right of organization is of tremendous importance and value to the wage-earner. He owes to it most of what he has secured in the way of advantages and preferred position. When we have mentioned, however, the right of the individual to quit and the right of organization, we have mentioned the most important rights that the wage-earner possesses. His standing in industry becomes more evident when we compare the rights possessed by the wage-earner with those of his employer.

The right to make decisions is possessed by the employer alone. It follows that the wage-earner has no right to an

effective voice in determining conditions of his employment. He has a voice, to be sure. He possesses that in his right to bargain about the conditions of his employment. He exercises this right when he chooses between one job and another. The discussion above, however, indicates clearly enough that this sort of voice is not always effective. It must be clear, also, that it is only the voice to which he has a right. He has no right to make it effective.

It may appear to many that this statement is wholly contrary to fact. Everyone knows of conditions where a very strong union without question secures advantages for its members. Indeed, a union may be so strong at times as to be able practically to dictate terms to the employer. This, however, is the exercise of power, not the exercise of a right. If the worker had a right to this power, no one could take it away from him. The whole history of organized labor, however, shows it to be a movement that is as much concerned with the retention of power as it is in securing improved conditions. The power wielded by a strong union is due not to a right, but to casual and possibly temporary combinations of circumstances. When the employer recognizes that these circumstances are too strong for him to resist, he yields to the demands of the union. The difference between the rights possessed by the employer and the employee at such a time lies in the fact that the employer has the sole right to make decisions. Even when he yields to the demands of the workers he does so as a matter of strategy or policy. His assent is necessary to bring into being the desired conditions, no matter how great the bargaining strength of the union may be, or how weak that of the employer. His voice is the only voice that is effective as of right. He is the one who must

make decisions and his right to do so exists independently of any temporary combinations of circumstances. It flows inevitably from the fact that he occupies the status of owner.

It may seem that in such a case as this it will not make much difference to the wage-earner who it is that has the technical right of making decisions, if he is able, somehow, to get the desired decision made. It would seem to be the same eight-hour day, whether decreed by the employer or by the workers. At the time it probably will not make any difference. In the long run, however, the matter is of tremendous importance. Given the existing social order, the owner's right of making decisions is an inalienable right. It exists by virtue of his relationship to industry, by his legal status as owner. The worker's ability to influence the owner's decisions depends upon no right whatever, but upon casual and possibly temporary circumstances.

The existence of the employer's right to make decisions as distinguished from the temporary power of the union based on circumstances appears in his unquestioned right to decide what to do with the business. No matter how strong the union may be, the employer, if he wishes, may close down the plant and throw everybody out of work, or he may dismantle the plant and move it elsewhere. If the employer is a corporation with a number of plants in different parts of the country, it may yield to the union where it is strong, and take advantage of it where it is weak. It may even sign an agreement with the union for the plants where they are in control, and then close down those plants and get its work done in non-union territory. Whenever a strike occurs in the garment industry in New York, one of the chief problems of the union is to follow

up employers who ship their machinery out of town and start a new factory elsewhere.

Another important factor is that the wage-earner has no right to an exact knowledge of the conditions of the business in which he is employed. Even if he did have a right to an "effective voice" as to the conditions of his employment, it would be difficult and often impossible to make intelligent use of the right. He has no access to the books. He knows neither the costs of the enterprise in which he is engaged nor its profits. He is more or less in the dark concerning the worth of his labor, because he has no means of finding out the real value of the contribution that he makes to production. The Webbs refer to this point in their chapter on "The Higgling of the Market":

> Now the essential economic weakness of the isolated workman's position . . . is necessarily known to the employer and his foreman. The isolated workman, on the other hand, is ignorant of the employer's position. . . . What is even more important, the employer, knowing the state of the market for his product, can form a clear opinion of how much it is worth his while to give rather than go without the labor altogether, or rather than postpone it for a few weeks. But the isolated workman unaided by any trade-union official, and unable to communicate even with the workmen in other towns, is wholly in the dark as to how much he might ask.[1]

While this statement truly implies that the position of the isolated workman would be improved by membership in a union, it is evident that not even union membership will provide complete knowledge as to the true condition of an industrial enterprise. Unless the workers have access to the books, the employer will always be in a

[1] Webb, *Industrial Democracy*, 1914 edition, p. 657.

stronger bargaining position because of his greater knowledge.

In the third place, under existing industrial relationships and legal rights, it must be recognized that the wage-earner has no right to be in industry at all. Despite the fact that he invests in industry his labor and his time, he cannot acquire an established standing in industry. He cannot acquire the right of access to a job, however great may be his investment of time or energy. No amount of labor and no conceivable stretch of years will suffice to entitle him either to a chance to work, or to hold a job after he has secured it.

The contrast in the rights of wage-earners and capitalists is nowhere more strikingly evident than at this point. The wage-earner may be and generally is dismissed whenever there is no longer any possibility of making a profit out of his labor. At the moment of dismissal his claims upon the industry cease. When the plant closes down, all obligations to labor are terminated. There is no thought at such a time of a permanent severance of the relationship. On the contrary, when the market improves, the workers are recalled and industry is resumed. During the period of idleness the wage-earner is expected to hold himself in reserve and wait for the blowing of the whistle. He is expected then to present himself at the factory gate in good health, in full possession of his faculties, and ready once more to devote his muscles and his skill to the service of society.

Unlike labor, which is paid by the job, capital is paid by the year. During periods of unemployment wages stop, but interest on bonds and other fixed charges are kept up. Successful corporations build up a surplus out

of which dividends are paid in lean years.[1] The maintenance of the plant, protection of machinery against deterioration during idleness, is a charge on industry. The wage-earner, however, is obliged during the same period to shift for himself.

It is evident, therefore, that the investment of one's life secures for the investor nothing in the way of rights comparable to the rights established by the investment of a dollar. The one investment sets up a train of obligations that are relatively permanent and practically inalienable. The other begins and ends in insecurity. Consequently, the wage-earners are not citizens of the industrial commonwealth. They are aliens, rather, possessed of few rights and subject to deportation without trial.

When the worker understands his position, indifference, restriction of output, and unconcern about the interests of the industry become inevitable. It is hard for the worker to see that there is any vital connection between his interests and those of the industry in which he is employed. It is difficult for him to acquire any lasting concern about an industry when his connection with it may be severed at any time. Its interests do not appear to be his interests any more than the job is his job. This is a factor that is almost altogether overlooked in a discussion of restriction of output. It is often approached as a practically inexplicable phenomenon. Much of the discussion seems to assume that the wage-earner is lazy and possibly vicious.

[1] This is considered so important an element in good management that, under the Esch-Cummins Transportation Act, railroads with net earnings of more than 6 per cent are required to put one-half of the surplus into a sinking fund for the purpose—among others—of guaranteeing the payment of interest on bonds.

It is doubtful, however, whether anyone is able to work effectively in an enterprise with which he has no definite or vital concern—where hard work cannot bring security of tenure. Moreover, the rewards of labor involve not only financial remuneration, but the consciousness of having played an important and necessary part in the accomplishment of a desirable end. It is almost impossible for a wage-earner to have this feeling as long as he has the consciousness that the employer is ready at any time to substitute another workman in his place. Indeed, it is doubtful if he can develop such a feeling as long as it is a fact that the employer has a right to effect such a substitution, whether he is likely to exercise the right or not.

CHANGES IN STATUS OF THE WAGE-EARNER

The preceding is an accurate statement of the wage-earner's standing in industry. It must be recognized, however, that in a changing progressive society few things are final or absolute. There is no such thing as status for the wage-earner or anyone else in the sense of something fixed and unchangeable. Private interest and inertia tend to fix for a time, but only for a time, the relation of groups to each other. Other forces are at work. Changes in economic conditions and in ethical ideals are certain to bring far-reaching changes throughout the whole social structure. Consequently, changes are slowly taking place with respect to the wage-earner's relation to the other groups of society. Many different factors are influencing this change, but principally it is due on the one hand to the economic pressure of organized labor, and on the other to a larger ethical concept which is becoming mani-

fest in society at large and is finding expression here and there in industry.

For example, it is not true that all employers are endeavoring to destroy the unions. This was forcibly brought to my attention back in 1912 when, fresh from a study of conditions in the steel industry in the United States, where unions had been absolutely outlawed, I visited England and was given an opportunity to be present at one of the hearings of a royal commission which was inquiring into the economic effects of trade agreements. On the day in question the witnesses were the principal steel manufacturers of the country. Without exception they stated that they had contractual relations with the unions and were glad to have them. One of the members of the commission was Sir Hugh Bell, one of the leading steel men in England. On my calling attention to the contrast in attitude on this point between American and British steel manufacturers, Sir Hugh remarked, "Oh, we are all union men over here." Since that time the unions in Great Britain have increased their strength rather than lost ground.

But it is not in the British Isles alone that employers recognize the importance and desirability of labor organizations. It was a significant fact back in 1914 that when the United States Commission on Industrial Relations called to the witness stand the leading financiers of New York to inquire as to their attitude toward labor matters, not one of them would say that he was opposed to collective bargaining. The significance, of course lay in their public acknowledgment of the value and necessity of organization, rather than in their practice, for many of them were actively opposing organization in their own plants. With respect to many other employers, however,

recognition of the right of organization is practical as well as theoretical. As a practical matter, thousands of employers are dealing with unions constantly, and express themselves as preferring that method to the method of individual bargaining.

The great shop-committee movement which has had such an active growth in industry within the last few years is a recognition of the right of the wage-earners to a certain voice in industry. Not all shop committees have been organized in entire good faith. Some of them have undoubtedly come into being for the purpose of heading off a union movement. Their presence, however, even under the most restricted conditions, indicates a pressure toward a different relationship. Furthermore, in some of the establishments with employee associations, as at the Filene Department Store in Boston and at the Dutchess Bleachery at Wappingers Falls, New York, there is broad recognition of the right of the employees to a voice in industry, and there is an apparent willingness on the part of the management that that voice shall be really effective.

It was stated above that the wage-earners would not be able to make intelligent use of their power even if they had a right to an effective voice regarding industrial conditions, because they do not know the conditions of the business. Within recent years there has arisen here and there a strong demand that the workers should have access to the employer's books. This privilege has actually been granted to a limited degree in arbitration proceedings. To a certain degree the same principle is embodied in the election of wage-earners to the directorate of employing corporations. The significance of such action has distinct limitations both on account of the fact that the election is by the stockholders and not by the wage-earners, and

on account of the limited degree of power that a single wage-earner, or even two or three, on a board of directors would have. Nevertheless, such a plan indicates clearly a recognition on the part of capital that the workers have certain needs which are not met by the ordinary arrangements.

Finally there is developing also a conception of an ethical right in a job. It is everywhere recognized that a man has no legal right to continuity of employment, but there is coming to be a strong sentiment in the community, which is shared by the employers, that there is little ethical justification for the discharge of a man who has seen years of service with the same employer. This conception has not yet so established itself as to have very much influence when sharp differences arise between employers and employees. Nevertheless, the fact that such a conception exists at all has an importance that is not to be ignored.

It must be said, therefore, that while the legal status of the wage-earner is at the present time restricted and distinctly inferior to that of the property-owning class, there are forces at work which seem to suggest that this status is not to be permanent. It will not do, however, to overestimate the significance of these forces. It must be noted that they are only occasional in appearance, intermittent in practice, uncertain of continuity. They are of importance as indicating possibly the direction in which we are going. They do not mark the achievement of new rights. These can be secured, and a new status for labor reached and made inalienable, only by the enactment of law or by the development of custom so thoroughly embedded in habit and thought as to have the force of law.

It is not to be expected that such changes as these will

come overnight. Great social changes do not come that way. Neither, if there is to be a change in the status of labor, is it likely that it will affect all labor at the same time. Just as the movement upward from slavery was a movement that required several centuries to take place throughout the civilized world, so other significant changes in the status of labor will in all probability come slowly. But it does not seem to be a matter for doubt that through the agency of the two forces mentioned, the economic movement and the ethical, the basis is being laid for a change that can only be termed fundamental. And about these movements there is a certain suggestion of the inevitable.

READING REFERENCES

BROOKS, J. G.: *Labor's Challenge to the Social Order.*
COLE, G. D. H.: *Guild Socialism,* chap. i, "The Demand for Freedom."
FOSTER, WM. Z.: *The Great Steel Strike,* chap. xiv.
HENDERSON, ARTHUR: *The Aims of Labor.*
MACIVER, R. M.: *Labor in the Changing World.*

CHAPTER XXI

"CAPITAL, LABOR AND THE PUBLIC"

THIS book might logically have ended with the last chapter. It is concerned with analysis and not with "solutions," and discussion of programs of amelioration or reform is therefore out of place. But all through, the temptation to say something of the constructive activities, both potential and actual, that may influence the course and volume of unrest, has been great, and brief mention of them appears in some of the chapters. It seems desirable in a final chapter to indicate more definitely, though briefly, the nature and scope of some of these activities.

THE WORKERS

The first constructive act that is open to the workers is that of organization. It is only through organization that the individual worker can possibly express himself with any vigor, respecting the conduct of industry. The very fact of organization gives him a responsibility for industry that he never had before. He is now a part of a force that may accomplish much for good or ill. He can discharge that responsibility only by recognizing it, giving time and thought to the affairs of his organization, attending its meetings, and voting on its policies. Like the political units of city or state, the union has certain potentialities in the way of personal advantage that are too important to be overlooked by the self-seeking poli-

tician or grafter. The union member, therefore, like the citizen, has some duties to perform in keeping the grafters out, and like the citizen, he sometimes fails.

The first constructive duty of a labor organization is to protect its members and promote their interests. This is so obvious a thing that it is sometimes interpreted too narrowly as involving mere incessant demands for "more and more" without any consideration for the broader interests of industry and society as a whole. The more statesman-like leaders of organized labor realize that if they are effectively to promote the interests of their members they must at the same time promote the success of their industry.

No one has a more vital interest in the elimination of waste and the promotion of efficient methods of production than the wage-earner. The demand for higher wages is essentially a demand for more goods. In part, it may be possible for this demand to be met by a more equitable distribution of goods already available, but nothing is more obvious than the fact that when equity has done its utmost, a further increase in well-being must depend upon an increase in the supply of goods available for distribution. There are destructive radicals who believe that anything that promotes the interests of the employer must be, *per se,* contrary to the interests of the worker. But this is not a view that is generally held. The radicals in the labor movement are looking forward to a day when industry may be taken over by the workers and the capitalist employer eliminated. The constructive ones among them think of industry, therefore, as vitally bound up with labor's interests, and understand that an injury to the productive machinery of the country would be an injury to labor itself. They are anxious that when the

day comes for industry to be "taken over," there shall be something to take.

The conservative leaders, too, are giving evidence of a new recognition of the importance of production. The noteworthy instance of co-operation between the machinists' union and the Baltimore and Ohio Railroad mentioned in Chapter XIX is a case in point. And in 1923, in the report of the Executive Council of the American Federation of Labor, we read: ". . . The ambition to build has been the driving force behind our most remarkable strides. The abuses, terrible and costly as they have been, have been largely coincidental. The ambition to build must be saved; the abuses must be eradicated by means of organization befitting the state of our development and the demands of our time. In no other way can industry continue that growth which is required to satisfy our ever-growing demand for commodities. . . ."

Not only is organized labor taking cognizance of its responsibility for production, but it recognizes that if it is to continue to advance, its members must enlarge their mental horizon. Within the last half dozen years a new movement for workers' education has arisen. Beginning with the idealistic Jews of the clothing industry of New York City, it has spread through other races and industries and to many cities, until it has been accepted and indorsed by the American Federation of Labor itself. International unions are developing their own educational classes; central labor bodies in various cities have developed what have come to be known as trade-union colleges; and at Katonah, near New York City, there has been established a resident labor college where young working men and women are encouraged to go and spend two years of their time acquiring a broader education

in history, economics, philosophy, literature, and the tactics of trade-unionism.

There has been, and undoubtedly will continue to be, some questioning of this movement in orthodox educational circles, lest it provide an education that is so marked with a class bias as to be unscientific and misleading. That is a danger, it may be remarked, that is not peculiar to workers' education. But in so far as any educational exercise brings a better understanding of current economic phenomena it cannot fail to have an upbuilding and broadening influence upon those who are engaged in it. Furthermore, if workers' education should mean a strengthening of class consciousness, it will also mean a strengthening of group loyalties. It will mean the building of a labor movement that will concern itself with the interests of workers as members of society rather than with the petty selfish interests of the workers as individuals.

Another field in which organized labor is making its contribution is in the discovery of new adjustments for economic and social ills. There is a new interest among unions in the subject of health. The International Ladies' Garment Workers Union in New York City is carrying on an experiment which should be of interest not alone to members of organized labor, but to society at large. In a building owned by the union is the headquarters of its health department. Here $100,000 worth of equipment is at the disposal of the 80,000 members of the union in New York. Here they have their own doctors and the members come voluntarily to the union clinic for the purpose of checking up their physical condition. A fully equipped operating room is provided, where minor operations are performed by a surgeon employed by the union.

There is an extensive dental department where high-grade work is done at prices that fit the worker's pocketbook.

A local of the painters' union in New York has established a medical service on a more modest scale, involving physical examinations and consultation. This is of exceptional importance to painters on account of the constant danger of lead poisoning to which they are exposed. Frequent physical examinations enable them to take the necessary treatment in time to eliminate the poison.

Besides these activities, a field in which the opportunity of the unions for making constructive suggestions is almost unlimited is that of discovering a more enduring basis for peace. In earlier pages of this book attention has been called to the success with which plans have been worked out between employers and unions as in the case of the agreement between the molders and Stove Founders' National Defense Association. The various unions in the printing trades, especially in newspaper offices, have arbitration agreements with their employers, with the result that strikes are rare. The garment workers, in the field both of women's and of men's clothing, have had long and successful experience in the more peaceful methods of adjusting their relationships with the employers.

Perhaps the most striking statement from a labor source, indicating a spirit and desire favorable to the establishment of more peaceful relations, appears in the last annual report of the Executive Council of the American Federation of Labor:

It is not the mission of industrial groups to clash and struggle against each other. Such struggles are the signs and signals of dawning comprehension, the birth pangs of an industrial order attempting through painful experience to find

itself and to discover its proper functioning. The true rôle of industrial groups, however, is to come together, to legislate in peace, to find the way forward in collaboration, to give of their best for the satisfaction of human needs. There must come to industry the orderly functioning that we have been able to develop in our political life. We must find the way to the development of an industrial franchise comparable to our political franchise. There must be developed a sense of responsibility and justice and orderliness. Labor stands ready for participation in this tremendous development.[1]

THE EMPLOYERS

The contribution that the employers have to make toward better industrial relations and industrial peace must be considered from two points of view: where the interest of employer and employee appear to be common, and where those interests appear to be opposed.

In the field where interests are common, much has already been done by constructively-minded employers throughout the country. The great safety movement for which so much credit is due the United States Steel Corporation, the railroads, and the machine industries, is one of the developments of the last two decades. The National Safety Council embraces in its membership practically the whole of industrial America. It is an organization that is devoting itself to scientific and aggressive work in the direction of the lessening of the accident problem in industry.

[1] Report of the Proceedings, 43d Annual Convention, American Federation of Labor, Portland, Oregon, October, 1923, p. 32.

Along with the safety work has come an interest in health. It promotes efficiency to have a clean and sanitary factory. In the women's clothing industry in New York there is a Joint Board of Sanitary Control, consisting of representatives of the employers, the workers and the public. This board, created in 1910 by agreement between the two parties, lays down special rules for the promotion of health and safety in the factories. It employs a corps of inspectors who check up on the observance of these rules, and may call on either the union or the employers' association to assist in enforcement. Most of the larger industrial plants and many mercantile establishments have some sort of medical department. In most of them a nurse, at least, is employed, and many of them have emergency hospitals with doctors and nurses in attendance. The work of promoting health and safety in industry has now grown to such an extent that industrial medicine is recognized as a distinct, specialized branch of the medical profession.[1]

Health work as well as other distinctly service features of industry are best carried on under a specialized personnel organization. The work of selecting, training, and dealing with the necessities and problems of the employees in a plant of any size is so important and so complex that a separate department with an able executive in charge is needed to co-ordinate and direct. Those employers who have been most successful in their employment relations have not left these matters to chance, nor their adjustment to the spare time of a busy executive whose primary responsibility lies in another field.

One of the most interesting developments of recent years

[1] Cf. National Industrial Conference Board—Health Service in Industry, Research Report no. 34.

is the co-operation of the personnel man and the engineer. Scientific management in its earlier stages took account of machinery rather than men, but a great change has come about in the last decade. The engineer to-day is to be looked to for leadership not alone in the field of mechanical technique, but in the field of industrial relations. Perhaps the outstanding example of this sort of leadership appears in his joining forces with the economist in an attack on the problem of unemployment.

The fight against the evils of unemployment has two aspects. Far the most important is the one that directs itself toward stabilization of industry—the wiping out of seasonal fluctuations, and the effort to control the business cycle. Within recent years a number of manufacturers engaged in highly seasonal industries have succeeded in keeping busy throughout the greater part of the year. The accomplishments of such firms as the Dennison Manufacturing Company in Framingham, Massachusetts, Joseph & Feiss in Cleveland, the Hickey-Freeman Company in Rochester have pointed the way to other manufacturers.

The policies adopted by these manufacturers involve, first of all, an appraisal of the capacity of the plant and a forecasting of business prospects. They have then concerned themselves with co-ordinating their production and sales. They have found it possible to manufacture for stock in the dull season, or they have developed a standard product for which there is a reasonably steady demand, to be worked upon during slow periods in other lines. Through an intelligent sales policy they have succeeded in inducing jobbers and retailers to accept deliveries in advance of the season, or to place their orders well in advance of delivery. The practice of "selling what

you make" instead of "making what you sell" has discouraged unhealthy expansion.

These are some of the methods that have been employed with success by many business firms in finding opportunities for profitable activity during all periods of the year. Such a policy not only provides employment for the workers and maintains the working organization intact, but it substitutes profits for losses, and therefore constitutes a marked advantage to both employers and employees. There is no assurance, however, that such plans will provide employment throughout the year. They may lessen unemployment, but it is not to be expected that they will be uniformly successful, or that they will keep everyone steadily at work. The second aspect of the effort to cope with the problem of unemployment, therefore, is concerned with insurance. It is interesting to note that some of the firms that are doing so much in the way of stabilizing employment are providing for unemployment funds which can be drawn upon by the employees during periods of idleness due to no fault of their own.[1]

That these activities are in a field where interests of employer and employees are common is indicated by the fact that unions and employers are beginning to attack the problem of unemployment insurance jointly. The International Ladies Garment Workers Union have an agreement with the employers in the Cleveland market, which guarantees them either full payment for forty weeks in the year, or unemployment insurance during the weeks of idleness within that limit. The cost is paid by the employer. The benefits were at first two-thirds of the weekly earnings, but they have been placed at one-half by the latest agreement.

[1] See chap. v.

The Amalgamated Clothing Workers have recently worked out an unemployment insurance plan with their employers in Chicago. Unlike the Cleveland plan, the cost is to be paid equally by the employers and the union members. The plan calls for the establishment of a fund by the weekly payment of one and one-half per cent of the employees' wage, and a similar proportion of the employer's payroll. There is no guaranty of employment, but each member eligible to benefits is to receive 40 per cent of his weekly wages after two weeks of unemployment, and to continue to receive such payments for a maximum of five weeks in any one year. A third unemployment insurance plan has recently gone into effect in St. Paul by agreement between locals of the United Cloth Hat and Cap Makers' Union and their employers.

II

Where interests appear to be opposed, the employer has an opportunity to do two things: To re-examine the whole field with a view to discovering whether there are not certain aspects of it which a better understanding will prove to belong in the field of agreement instead of controversy; and, where matters remain unquestionably controversial, to endeavor to find a *modus vivendi* that will make the harsher forms of struggle unnecessary.

Meanness and dishonesty do not pay. The intelligent merchant knows that, and the day of misrepresentation and short weights has gone by, except among those who are too ignorant or too unimaginative to depend on good management and honest service for their profits. What the merchant has learned the employer is learning. It doesn't pay to "take it out of labor," and the intelligent

employer is constantly discerning a broader field in which it does pay to adopt policies which are in line with labor's needs. But try as he may, the employer cannot bring all of his relations with labor into the field of agreement. Under the best of conditions there remains an area of conflict; it is within this area that industrial statesmanship of the highest order has its opportunity.

An outstanding factor in industry is the average employee's distrust of management. However it came about, however blameless with respect to its origin any particular manager may be, he has it to reckon with and can break it down only by positive evidence of fair dealing and good will. The growth of shop committees is fairly convincing proof that management is coming to believe that distrust cannot be broken down by any employment policy, however good, that comes into being solely by fiat and from above. Conference and agreement are among the necessary prerequisites to understanding and confidence. President Grace of the Bethlehem Steel Company is quoted as saying that the change from twelve hours to eight in their plants was accomplished with the co-operation of their shop committees, and with much greater ease than would have been the case had there been no organized means of communication between management and men.

Any sort of conference and consultation is apt to create better feeling than arbitrary action. Shop committees are important in this respect and so are unions. There is a certain basis for self-respect in an organization created by the workers' own volition, as against one promoted by the employer, and there is better opportunity in such an organization for initiative and genuine collaboration with management in the settlement of vexed questions. This is evident in the case of unions so well established that the

employer has stopped trying to destroy them, like the railway brotherhoods, and it is evident in the case of other unions in the shops where there is a desire to co-operate rather than to destroy. The Hart, Schaffner & Marx agreement, under which there has been law and order since 1910, has worked because both parties to it will that it should.

THE PUBLIC

The public consists of all of the people. With respect to a single industrial controversy it may be possible to identify three distinct groups, and to name them, with some degree of propriety, capital, labor, and the public; but when we think of society as a whole, we cannot exclude employers and employees from the public group. If we were to do so that group would shrink to insignificant proportions. The public, while including employers and employees, is different from either because it can express itself only through legislation or public opinion. It consists of citizens and consumers instead of producers.

This public has a deep interest in industrial relations, but as a public it is not apt to contribute much directly toward a solution of the problem of unrest. The most immediately practicable contributions will be made by employers and employees. They are the persons actually involved in the struggle, and are most directly affected by it. They know more about it than anyone else. It is therefore to be expected that the formula of industrial peace, if it is ever found, will be developed in the workshop and not in the legislature.

But the public has a very important rôle to play nevertheless. It can hasten the finding of equitable adjustments by creating an atmosphere favorable to their discovery.

This must be an ethical atmosphere and it must be an understanding atmosphere. The more widespread the understanding of industrial facts, the sooner will employers and employees find a way of adjusting their difficulties. It is not easy for everyone to obtain the facts of industry. Even when the facts are available,—as so many of them are, in census reports, publications of the various departments of government, etc.—it is hard for the average man, busy with his own affairs to look them up. He must depend, in the main, upon leaders of thought in the community—in particular, the church, the press, and the school.

But information is not enough—there must be understanding if the public is to play its rôle satisfactorily. Facts may be comprehended with the intellect, but sympathetic understanding is possible only when we put ourselves in the other's place. Behind industrial controversies there are the emotions and passions that are common to mankind. It is blindness to attribute to the actors on the industrial field motives essentially different from those that actuate men everywhere.

The definite contributions toward better industrial relationships that can be made by the public can come through two channels, legislation and public opinion. Through the legislature it is possible to establish a point below which there is to be no controversy between employer and employee. When the legislature passes an eight-hour law for women employees, it is making impossible any controversy as to whether hours should be nine or ten. When it passes a minimum-wage law it establishes a point below which there is to be no struggle over wages. In the same way, by the passage of laws providing for safety in factories, workmen's compensa-

tion, one day of rest in seven, and so on, it is removing the subjects treated from the realm of controversy, at least up to the level established in the law.

Such intervention by the public appears to be desirable from every point of view. It outlaws the sweatshop and protects the wage-earner against the meaner forms of exploitation. It protects the fair-minded employer from the competition of the conscienceless exploiter; and it promotes industrial peace because, although it does not eliminate controversy, it raises its level. It fixes a minimum base below which controversy is outlawed.

Through the agency of the legislature, also, the public may intervene directly in the industrial struggle. That is, it may establish bureaus of statistics to gather and publish information concerning wages, the cost of living, safety, health, and other matters that are or may become subjects of controversy. It may provide for investigation and publication of the causes of strikes, and for mediation between employer and employees engaged in a controversy. It may clear the ground for voluntary arbitration.

Compulsory arbitration is sometimes proposed as a remedy for industrial disputes, but those who favor it fail to understand the nature of industrial unrest. The labor movement involves a controversy that cannot be settled or ended by adjudication. It is utterly unlike the ordinary litigation with which courts of law are concerned. Strikes and other manifestations of unrest are a protest against the economic and social *status quo*. The struggle is not to obtain favorable interpretation of recognized and accepted law, but rather to secure new rights.[1]

[1] See two articles by the author—"The Public and the Labor Struggle," *American Labor Legislation Review*, September,

More powerful than legislation, in the long run, is the force of public opinion. It may at any time be an uninformed and misled public opinion, but it will be powerful, nevertheless. This makes it of great importance that the public shall have access to the facts of industrial life. When it has an understanding knowledge it will begin to develop an ability to discriminate between good and bad in industrial relations. In an understanding atmosphere it will be impossible for anything not approved by the public conscience long to endure.

The most striking recent example of the force of public opinion is the decision of the steel industry to abolish the twelve-hour day. The steel strike of 1919 and the report of the Interchurch World Movement on that strike had served to focus public attention on the twelve-hour day. Acting under the influence of that opinion, President Harding appealed to the steel men to abolish the practice. In May, 1923, they reported to the President that any change in hours would for various reasons be impracticable. Then followed a storm of protest and condemnation that was quite without precedent. Religious bodies passed resolutions opposing the twelve-hour day; the papers and periodicals the country over condemned the action of the steel men; everyone who could express himself seemed outraged at the report. This clamor kept up, moreover; as the weeks went by it showed no signs of dying down. Early in August, ten weeks after the decision not to make any change in working schedules, it was announced by the president of the American Iron and Steel Institute that the steel industry had decided to abandon the twelve-hour day.

1923, p. 190; and "Government Coercion in Labor Disputes," *Annals*, July, 1920, p. 74; also chap. xx, supra.

The foregoing is an attempt to enumerate some of the possible activities having as their objective an approach toward better adjustments in industrial relations. They are activities merely, not remedies. They do not constitute a program for the solution of the labor problem. Indeed, there has been no thought in the writer's mind of offering any formula for industrial peace unless it be the formula of open discussion, free speech, tolerance for unpopular views, and an attitude of welcome toward new ideas. Through such a formula the way toward a better day in industry may be found. Whatever solutions to the riddle there may be, it is not likely that any of them will be discovered, still less the best one chosen, in anything but an atmosphere of freedom of thought and patient inquiry.

There must be room for experimentation. The unions and the shop committees must both have their chance. Advocates of a benevolent capitalism must have opportunity to state their case and so must the proponents of guild socialism, syndicalism, and communism. Organized society cannot possibly suffer from active discussion of all the conceivable "roads to freedom" that may be proposed. For there is need of constructive reorganization in society. Ramsay MacDonald, in his first address in Parliament as Prime Minister of Great Britain, gave expression to a sentiment that has significance for other countries than his own: "The national life to-day is far too much like an oasis here and an oasis there placed in the middle of the great surrounding desert of distress. I do not want the desert to swallow up the oases. I want the oases to spread and spread until they swallow up the desert."

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